

# RESPONSE TO COMMENTS

## Tentative Order No. R1-2009-0038 Categorical Waiver For Discharges Related to Timber Harvesting Activities On Non-Federal Lands in the North Coast Region

Prepared by:  
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North Coast Regional Water Quality Control Board  
June 4, 2009

The following are responses to written comments received during the public comment period on the subject tentative order. Also included are responses to comments that evidenced a need for clarification.

**CONTENTS:** All comments received during the comment period are listed below, followed by Regional Board Staff response.

### **Comments received during workshop and prior to release of tentative Order**

Mike Miles, HRC	March 23, 2009
Dan Cohoon, Able Forestry	March 25, 2009
Claire McAdams, private forest landowner	March 27, 2009
Chuck Ciancio, private landowner and RPF	April 28, 2009

### **Comments received during the comment period specific to the tentative Order**

Alan Levine,	April 9, 2009
Tom Walz, SPI and BOF	April 27 and 29, 2009
Jason Poburko,	May 1, 2009
Klamath Alliance for Resources & Environment	May 3, 2004
Humboldt Redwood Company, LLC,	May 4, 2009
California Forestry Association,	May 8, 2009
California Department of Forestry (CAL FIRE)	May 8, 2009
The Buckeye,	May 9, 2009

### Comments from Mike Miles, HRC forester

1. **Comment:** If significant revisions are required, consider having a two-tiered waiver system, where under the first tier, smaller projects proposing light-touch harvesting on less than 160 acres, are truly exempt from an erosion control plan, monitoring requirements and reporting, fee assessments, any specific WLPZ restrictions other than those already in place under the Forest Practice Rules and where applicable, DFG Coho guidelines.

**Response:** *Although not recommended in this waiver, a multi-tiered permitting option is an option for the Regional Water Board. This approach was not recommended at this time, in order to keep the proposed waiver similar to the existing version.*

2. **Comment:** For larger projects, which currently fall under the existing waiver, but which are of concern to WQ staff because of perceived waiver inadequacies with regard to erosion and stream temperature control, please consider the following recommendations:

The erosion control plan inventory and treatment schedule component of the proposed waiver revision be only required in watershed where sediment impairment is documented (303d listing). If not sediment impaired: WQ should allow both the State and landowners to rely upon the numerous measures contained in the FPRs and DFG 1600 for sediment prevention. If 'impaired', then and only then require erosion control plans which allow for 'fixes' to be conducted over areas and time periods commensurate with harvest operations and income (i.e. flexibility in scheduling). The landowner is already currently required to do a sediment source inventory up front, at time of NTMP/THP preparation, under current FPRs, so while seemingly duplicative, it is arguably not too much more to ask the landowner to provide this information to WQ at the time of NTMP/THP submittal. Since most watersheds in the north coast region are 303d listed as sediment impaired, most landowners would still be required to include an ECP as part of their project, so exempting landowners in non-sediment impaired watersheds seems a reasonable and relatively minor concession, consistent with the current TMDL approach.

**Response:** *Erosion Control Plans (ECPs) require landowners to develop an inventory of controllable sediment discharge source (CSDS), which are defined as those sites that meet all the following conditions:*

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of these Categorical Waivers,
2. was caused or affected by human activity, and
3. may feasibly and reasonably respond to prevention and minimization management measures.

The first condition refers to discharges in violation of Basin Plan Prohibitions contained in the Action Plan for Logging, Construction, and Associated Activities, and the Nonpoint Source Policy. These policies apply throughout the North Coast Region, and are not restricted to impaired waterbodies.

We believe that Waste Discharge Requirements cannot be waived for projects in which waste discharge sources have not been identified and controlled.

3. **Comment:** For pre-existing NTMPs in sediment-impaired watersheds, please consider allowing the landowner to 'transition into the ECP process, deferring inventory and scheduling requirements until timber operations on that specific area of the NTMP are 'notice' via NTO, allowing for harvest income to offset inventory and treatment costs. Not only does this address an economic reality, it honors the state's commitment to some 'safe harbor' benefits associated with agreeing to the 'light touch forestry' terms of the NTMP permit.

**Response:** *The proposed waiver anticipates that developing an ECP and a road plan will take time and cause additional cost for existing NTMPs. Please see our response to Comment #1 from the Buckeye. A landowner may have from one to five years to develop an ECP and longer to implement a schedule to fix problems based on a priority basis.*

4. **Comment:** For pre-existing THPs already covered by the existing waiver, let the current terms stand for the remaining life of the THP. This will avoid a lot of paperwork, economic hardship, and unnecessary stress, and smooth the transition from old waiver to new waiver terms and conditions.

**Response:** *We concur. This is the current proposal. THPs covered by the existing (2004) Waiver would not be required to enroll in the new Waiver, and are subject to the conditions of the existing waiver for the remaining life of the THP.*

5. **Comment:** While new ECP requirements for waivers seems duplicative of 14CCR 916.9(o) and 916.9.1(o) required under current state law and reviewable by the NCRWQCB under the current THP/NTMP regulatory review process; it does appear that these overlapping requirements can be dove-tailed using the more specified WQ ECP requirements to meet the FPR requirement.

**Response:** *While there may be overlap between various agency regulatory responsibilities, they are not identical. We agree that our requirements for ECPs generally exceed the FPRs. The Regional Board is making every effort to accept tasks performed and completed for other purposes to also satisfy those necessary for protection of water quality.*

6. **Comment:** The currently proposed riparian requirements for the purpose of maintaining stream temperature seems excessive outside of watersheds not listed as 303d temperature impaired, especially in the light of selection or other light harvest providing post harvest shade canopy being the only silviculture allowed upslope of the WLPZ. For temperature impaired watersheds require 65% canopy for entire WLPZ post harvest – its less complicated and yet still maintains necessary shade canopy for protecting water temperature, especially on the coast. Using the 303d temperature impairment as a trigger for a specific WLPZ measure in combination with a more reasonable canopy retention standard makes sense regulatory-wise as well as scientifically, and very importantly allows for restoration management in WLPZs and has somewhat less of an adverse economic effect on landowners than the currently proposed 85% 1<sup>st</sup> 50 feet and 65% from there on out for all watersheds alike regardless of whether there is a temperature issue or not.

**Response:** *The Regional Water Board is not only tasked with ensuring that temperature impairments are addressed, but also with ensuring that waterbodies that are currently meeting the temperature standards do not become impaired. The mitigations necessary for either case are the same. The current waiver provisions do allow for alternative approaches, including restoration management, provided the project proponent can present a logical argument that alternative prescriptions protect temperatures just as well in the long term.*

7. **Comment:** And finally, for the honorable consideration of allowing some intensive even-age management into the waiver 'arena', lessen the adjacent no-harvest areas to 200 feet for Class I, 100 feet for Class II, and 50 feet for Class III – defensible distances in light of most current watershed literature relative to the protection of stream temperature, LWD recruitment, and sediment delivery prevention.

**Response:** *Comment noted. Based on comments received during the March 24, 2009 public workshop in Fortuna, the proposed waiver is more flexible than that discussed at the workshop. The revised proposal consists of no harvest within 30 feet of Class I and II watercourses and within 10 feet of Class IIIs, 85% canopy retention between 30 and 150 on Class I, 30 and 100 on Class II, and 10 and 50 feet on Class IIIs, and 65% canopy retention for the remainder of the buffer zone.*

The specific condition for THPs under Category F, attempts to balance the desire to allow more plans to qualify for enrollment in the Categorical Waiver with the need to define those conditions that would result in low impact and thus be suitable for a waiver of waste discharge requirements. In order to achieve that balance, clearcutting is now a timber harvesting activity that may be waived, provided that stream protection widths in excess of those recommended by various studies designed to protect streams from all foreseeable potential impacts. Attachment I is a table from Appendix I of the Femat (1993), showing the range of recommended buffer widths for fish bearing streams compiled from numerous studies.

### Comments from Dan Cohoon, Able Forestry

1. **Comment:** [Below] is some suggested wording for Categorical Waiver F, Item 8. It would leave substantial cover in these areas, allow some management in the buffers and in our case, some rehabilitation work to take place on the ridge tops.

Current wording - No trees shall be harvested within 300 feet of a Class I watercourse, 200 feet of a Class II watercourse, and 100 feet of a class III watercourse when the Project includes even-aged harvesting (clearcutting) methods which maintain a canopy closure of less than 65% comprised of commercial species at least 30 feet in height.

Suggested changes – Within 300 feet of a Class I watercourse, 200 feet of a Class II watercourse, and 100 feet of a class III watercourse post harvest stocking shall meet or exceed single tree selection [FPR Sec. 913.2(a)(2)(A)] or commercial thinning [FPR Sec. 913.3(a)] standards when the Project includes even-aged harvesting (clearcutting) or similar methods which maintain a canopy closure of less than 65% comprised of commercial species at least 30 feet in height. These stocking requirements are in addition to the stipulations of Items 6 and 7 indicated above.

This would allow for some rehabilitation of under stocked areas as well as clearcuts to take place in conjunction with selection and commercial thinning type harvests as long as it was substantially away from the watercourses. As this is worded, no group selections would be allowed within these 300, 200 or 100 foot buffers.

**Response:** *Please see response to comment #7 by Mike Miles.*

### Comments from Chuck Ciancio

1. **Comment:** The proposed regulatory changes are substantial and not similar for older previously waived NTMPs as stated under item 6 on page 2.

**Response:** *Finding (item) 6 on page 2 of the Order states, “This Order is similar to the previous waiver but makes both minor and substantial revisions...”*

2. **Comment:** Previously waived NTMPs were purposely designed to not deleteriously affect the Beneficial Uses under item 8 on page 2.

**Response:** *Comment Noted*

3. **Comment:** I understand applicable economic numbers are in the process of being developed. With this in mind, it is obvious “Economic Considerations” have not been

evaluated as mentioned under item 8 on page 3. It is also obvious that other economic considerations have been involved in the formation of the proposed draft.

**Response:** *The staff report includes a section on Economic Considerations.*

4. **Comment:** Item 21 on page 5 provides additional justification for not requiring ECPs, and adding requirements to previously waived NTMPs by saying, "...NTMPs are not expected to pose a significant threat to water quality.

**Response:** *Finding (item) 21 on page 5 of the Orders states, "With the addition of general and specific conditions required for coverage under this Waiver, NTMPs are not expected to pose a significant threat to water quality and therefore it is appropriate to conditionally waive waste discharge requirements*

5. **Comment:** I believe it would be worthwhile to have staff illustrate how all this will work. This could be done by simply going through the whole process as I have done in this letter at a meeting. It would be very useful for staff to especially demonstrate how the regulatory height requirement under item 5(b) on page 14 is to be applied in the field.

**Response:** *Staff would like to point out the following: 1) while the scope of what is required to meet the waiver conditions has expanded somewhat, the basic structure of the waiver has changed very little, and the process to enroll plans in the waiver has been working well for the past five years, and 2) as has been pointed out in several public comments, much of what is required for waiver compliance is already required by various existing regulations, and must simply be compiled in a single document with an implementation schedule. We are willing to explain the process. If sufficient numbers commentators indicate that a public workshop is called for, we will have one.*

Please note, the height requirement referred to in this comment has been omitted from the draft Order.

6. **Comment:** Are all Water Quality staff reviewing and approving the listed plans considered to be "qualified professional"?

**Response:** *Comment noted. Water quality staff are either qualified professionals or overseen by a qualified professional.*

7. **Comment:** What Regulatory authorization allows you to put in place new water quality regulation without Office of Administrative Law's approval and Secretary of State?

**Response:** *This Order is a waiver of waste discharge requirements, pursuant to California Water Code Section 13269. The waiver does not put new regulations in place, but simply implements existing regulations contained in the Water Quality Control Plan for the North Coast Region (the Basin Plan). As such, it is exempt from review by the OAL.*

8. **Comment:** [The Waiver has changed] Basin Plan standards from a deleterious standard to a speculated potential discharge.

**Response:** *The commenter asserts that the Waiver has replaced the following waste discharge prohibitions from the Action Plan for Logging, Construction, and Associated Activities with a higher controllable discharge standard:*

“1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited,

2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited,”

The above Basin Plan prohibitions are incorporated into the Waiver and specifically addressed in the ECPs. They not been replaced and address both the discharge and threatened discharge (“placing of...where such material could pass into any stream...”).

Specific conditions for Categories E and F require landowners to prepare and submit an inventory of controllable sediment discharge sources (CSDS) as part of an ECP. Controllable sediment discharge sources are sites or locations within the Project area that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of these General WDRs,
2. was caused or affected by human activity, and
3. may feasibly and reasonably respond to prevention and minimization management measures.

9. **Comment:** Current one sided control exercised routinely by inexperienced and untrained staff. What is a landowner of permittee to do when staff or Executive Officer misuse their godly powers and act inappropriately or abuse their authority.

**Response:** *Differences of professional opinion can occur during project review. Staff members strive to be reasonable and are generally willing to find practical solutions to difficult issues. A formal complaint procedure is in place for people who believe that a Regional Water Board staff person has conducted themselves in an unprofessional or inappropriate manner.*

10. **Comment:** Covers staff inappropriately acting in the capacity of a Registered Professional Forester in violation of California Law

**Response:** *A formal complaint may be filed against persons under the Business and Professions Code for practicing without a license in fields requiring one.*

11. **Comment:** Asks the question why you are forcing more unnecessary restrictive regulations onto an already bad situation for timber landowners and rural communities when there is no factual, legitimate problem?

**Response:** *Proposed revisions to the waiver were carefully considered by Regional Water Board staff and are deemed to be necessary and reasonable. The Regional Board may, during consideration of the proposed revisions, decide to not consider portions or all of staff recommendations.*

12. **Comment:** Asks why no economic and cost analysis has been provided. For my little thirteen acre NTMP, the listed Water Quality Requirements add up to a \$7,000 cost (unless the RPF I know will do it for nothing) plus costs for dreamed up mitigations, monitoring requirements, Water Quality fees, professional costs such as Geologist, and timber value tied up by new WLPZ requirements every time I want to harvest growth. As proposed, this little regulatory change is not going to be cheap.

**Response:** A section on economic considerations is included in the staff report.

13. **Comment:** Requests clarification of time limits that apply to completion of waiver items and requirements. How will ECP, monitoring, inspection, mitigation requirements, and planned schedules be matched up with NTO completion dates; or, does Water Quality plan to carry over long term requirements past NTO completion dates into the forever.

**Response:** The ECP should include an implementation schedule proposed by the landowner, subject to review by the Regional Water Board. We anticipate that implementation of prevention and minimization measures for the majority of controllable sediment discharge sources can be scheduled concurrently with harvesting in the area, unless the priority makes it necessary to schedule

implementation before that landowner is ready harvest in the area. Monitoring consists of two winter period inspections per year, to continue through final completion of a THP, or completion of an NTO for NTMPs.

14. **Comment:** I say the State of California cannot unilaterally change the existing thirteen acre NTMP contract agreement with me. The state legislature through the Z'berg-Nejedly Forest Practice Act and other state agencies by their mutual

**Response:** Compliance with the conditions established in the categorical waiver do not necessitate CAL FIRE to change an approved NTMP.

### Comments from Alan Levine

1. **Comment:** a little better protection for Class III, unstable and inner gorge areas, is needed

**Response:** *Specific conditions for waiver Category F includes restrictions on timber harvesting activities in the channel zone of Class III watercourse, with the exception of use and maintenance of roads, construction and reconstruction of approved watercourse crossings, and to allow for full suspension cable yarding when necessary to transport logs through the channel zone.*

In addition, Category F requires a geologic report prepared by a licensed geologist when a landowner proposes timber harvesting activities on landslides, and geomorphic features related to landslides, which includes inner gorges. The Waiver does not include specific management practices for these types of unstable features. Instead, we rely on characterization and input into plan design by consulting geologists and agency review to provide site specific protection measures.

2. **Comment:** I could not find wet weather control language.

**Response:** *Specific condition 10 for Category F restricts timber harvesting activities during measurable rain events (defined as greater than ¼" in a 24-hour period).*

### Comments from Tom Walz, SPI forester and member of BOF

1. **Comment:** I request the board adopt a finding that Timber Harvest Plans submitted and approved by Cal-Fire which have incorporated the most recent Threatened or Impaired watershed rules adopted by the Board of Forestry be included in the Categorical waiver and exempt from Waste Discharge Requirements." Adoption of this finding will provide the same or better protection for water quality than the proposed regulations and will provide substantial cost benefits to affected landowners. Proposed T or I rules incorporate additional protection measures to reduce the risk of sedimentation, temperature and climate effects on watersheds

where Anadromous fish are present or may be recovered. This level of increased protection for a highly sensitive beneficial use (Anadromous fish) clearly meets the intent of the waiver language. Since the risk to beneficial uses has been minimized to reflect the standards adopted under Porter Cologne a requirement to enroll those THPs under a WDR is a redundant, costly, over prescriptive measure. Given the economic uncertainty, the lack of additional benefit from WDR protection and the ability to reduce overlapping regulation, I believe it is incumbent upon this Board to adopt the above stated finding. I wish to testify on June 4th before the Board as to why a finding such as the one stated above is in the best interest of the people of the State of California.

**Response:** *We recognize that the proposed T/I rules are a positive step forward in improving riparian conditions and providing buffer from upslope disturbances. We have been participating in the BOF rule making process of developing revisions for increased canopy, increased WLPZ widths, flood prone area guidance, larger geographic areas, and new headwater watercourse standards.*

Based on Regional Board work with water temperature impairments and modeling in the development of TMDLs, we have determined that canopy density and WLPZ widths in most cases must be larger than in the current T/I rules in order to meet our Basin Plan water quality objective for water temperature (Temperature WQO).

Additionally, the T/I rules currently apply geographically only to the limit of anadromy for threatened and endangered anadromous salmonids, and the proposed revisions would extend that to the planning watershed upstream of the limit of anadromy. There is a provision in the proposed revisions to apply the T/I rules on a project above the first planning watershed above the limit of anadromy, if determined in the cumulative watershed effects analysis. Unfortunately, the rules, current and proposed, do not guarantee compliance with the Temperature WQO in waters above those geographic limits for which the Regional Water Board is mandated to protect. The proposed rules have not been adopted and are subject to significant modification as it goes through the public comment period.

However, the waiver does contain provisions for project proponents to propose alternatives to the waiver conditions in many cases.

2. **Comment:** I request the board adopt the following finding. "In order to maintain or improve water temperatures for Class II watercourses the THP or NTMP shall maintain 85% shade on the watercourse. Shade canopy on the watercourse can be measured using Angular canopy density (ACD) Angular Canopy Density means the portion of the sky occupied by canopy along the sun's path between 10 a.m. and 2 p.m. (standard time) in mid to late-summer (i.e., July and August). ACD is measured in the thalweg of the watercourse channel, or along the streambank if wading is not possible. Several different types of instruments can be used to measure ACD including the spherical densiometer, but the Solar Pathfinder is preferred. ACD is

determined by counting the numbers of squares or fractions of squares displayed when using a canopy measuring device and converting into percent. "

**Response:** *The comment implicitly assumes that only sunlight occurring from 10 am to 2 pm is significant. Regional Water Board staff acknowledge that absorption of solar energy is greatest during these times of day, but reject the assumption that solar radiation during that period of the day is all that needs to be considered. For example, our work with a solar pathfinder indicates that less than half of the daily solar radiation in July occurs within that time of day.*

### **Comments from Jason Poburko, SPI forester**

1. **Comment:** The claim that the CA Forest Practice Rules' standard riparian buffer requirements fail to protect the beneficial uses of water, specifically cold-water habitat, is inaccurate.

The results of the [Scott River TMDL] analysis of the standard FPR riparian canopy requirements indicate that a reduction from 95% to 50% canopy would increase water temperature from 0.5 C to 1.5 C.

The assumptions carried forth from the two model runs contain fatal flaws. The base condition in the model uses GIS to establish a riparian corridor system (WLPZ) adjacent to all the watercourses, at the watershed scale. The model is then run assuming a canopy density of 95%. The model is then rerun with the canopy variable reduced to 50%. This generates a higher temperature output from the model, as would be expected. However this 45% reduction is applied across the entire watercourse protection network, at the watershed scale.

This model run does not represent a realistic application of the forest practice rules, as applied on the ground and does not represent any temporal or spatial factors. Under no circumstances are entire watershed's riparian networks, under the jurisdiction of this Board, converted from baseline (95%) to the minimum FPR standards (50%) by the application of the CA forest practices. Harvests under NTMPs are generally decadal on any given WLPZ acre, if not longer. When even-aged silviculture methods are applied, re-entry into the WLPZ network adjacent to these types of units is extended out further in time until either the commercial thin entry, or longer if left to final rotation. If and when an acre of WLPZ network is entered and canopies are reduced, in worst-case to the FPR minimum standards, stand dynamics and successional factors come into play and canopy levels increase trending back to preharvest levels over time.

Therefore I respectfully ask the Board to consider the following.

Prior to developing or approving an order with respect to the General Waiver for timber harvesting on non-federal lands, require staff to use their modeling capacity

to determine the threshold of percent WLPZ acres that can be harvested, while still maintaining the beneficial uses of water, specifically cold water habitat. These model runs should be conducted using both the standard FPRs and the T&I rules protection standards. It is further suggested that to provide expertise, in modeling these real world scenarios an RPF should be contracted or CAL FIRE staff should be engaged, to ensure that the model assumptions pertaining to spatial harvest, are representative of the real world application of the forest practice rules. Furthermore the results of these analyses should result in amendment to the 12 previously signed TMDL documents"

**Response:** Regional Water Board staff disagree that the methodology of the study or its conclusions are flawed. As with any modeling exercise, the results must be considered within the context of the assumptions used and limitations of what the model can and cannot do. We acknowledge that in comparing the different scenarios with the model we took a conservative approach. In developing protection standards to meet Basin Plan objectives and meet the waiver "low impact" standard, we have acted out of an abundance of caution and believe that a conservative approach is warranted. We believe the result of the temperature model showing an increase in water temperature when canopy along the riparian zone is reduced from 95% to 50% is valid under the modeled conditions, While it may seem unrealistic to assume that the canopy throughout the entire riparian zone would be harvested to the minimum levels allowed at any given time, many watersheds in the north coast region have been subject to high rates of harvest under current rules and it is useful to evaluate the worst case scenario. Finally, we continue to assert the current Forest Practice Rule minimum canopy retention standards for Class II watercourses do not fully meet the Basin Plan temperature objective.

Specific conditions for Categorical Waiver E and F addressing canopy retention along Class I and II watercourses allow landowners sufficient flexibility to utilize site specific measures if they can demonstrate to Regional Water Board staff that such measures will meet the Basin Plan temperature objective. That has been done in a number of instances.

### **Comments from Klamath Alliance for Resources & Environment**

1. **Comment:** Requirements of preparation of an ECP and a Road Management Plan for an entire NTMP will likely make projects cost prohibitive. These documents should be required only for the area of harvesting rather than the area of planning. The stated goal is to identify and treat from a larger land base including appurtenant roads and 100 feet off of the roads. Please site the code, section and supporting legislation under which NCRWQCB has the authority to make the request of requiring landowners to mitigate sites 100 feet off of appurtenant roads. Even if authority is given, this layer of costs would certainly discourage any landowner from seeking an NTMP and a waiver. At minimum, the wording "in a timely manner" should be removed from the time standards and replaced with a statement such as

the sites should be replaced based on the significance of delivery and the potential for delivery.

Hydrologically disconnecting roads is not always feasible. Requirement for disconnection should be linked to delivery potential, delivery amount and immediacy of need. At a minimum, alternate means such as road rocking or temporary road use should be discussed.

**Response:** *We concur that development of ECPs and Road plans apply to areas included in the harvesting plan. The Forest Practice rules 14CCR 895.1 defines a logging area to include areas within 100 feet of appurtenant roads.*

Notwithstanding, the Regional Water Board has authority to waive waste discharge requirements and to establish categorical waivers for certain timber harvesting practices, pursuant to the Porter-Cologne Water Quality Control Act (California Water Code Section 13000 et seq.) and the Water Quality Control Plan for the North Coast Region (Basin Plan).

Specific condition #8 of Categorical Waiver F requires, "Roads shall be hydrologically disconnected from watercourses to the extent feasible." By definition, road segments that are hydrologically connected to watercourses represent a potential discharge. Erosion resulting from alteration of hill slope drainage patterns by roads is a leading source of sediment discharge in forested environments in the North Coast region

2. **Comment:** Please define natural shade. It is stated throughout the waiver that natural shade needs to be preserved to meet temperature objectives. At a discussion meeting in Siskiyou County natural shade was defined as shade from mature trees. Please define natural shade. If the definition includes only shade from mature trees, please define why this rational was used. Shade is provided by trees of all sizes and age classes and it is worth noting that one of the basic principles of forestry is the size of a tree and the age of a tree are not correlated. Therefore, only accounting for shade from mature trees is erroneous. It is worth noting that trees can not be preserved into perpetuity. Forests are dynamic and unless this waiver allows for tree recruitment by allowing for openings along stream courses, overtime, the quality and quantity of streamside vegetation will be degraded.

**Response:** *Natural Shade is the shade on a watercourse as determined by the site potential naturally occurring vegetative community and topographic configuration. Or in plain language, natural shade is the level of shade that results from naturally occurring vegetation and topography, when human activities have not resulted in a decrease in shade. Shade can be provided by trees of any age. However, the amount of shade that results from mature trees, such as you find in an undisturbed condition, is the amount of shade that ensures compliance with the Basin Plan.*

*Nevertheless, the same level of shade is possible with trees that are not fully mature.*

Regional Board staff do not agree that forestry activities are necessary to allow for tree recruitment, nor do we agree that this waiver precludes management of streamside vegetation.

Regional board staff also acknowledge that some reduction from natural shade conditions can occur without a consequent change in temperature. Furthermore, staff acknowledge that temperature increases may be possible without adverse effects to beneficial uses. All of these situations may be allowed under the terms of the proposed waiver if a defensible argument is presented explaining a given situation.

3. **Comment:** All of the research cited by the initial study is Tahoe Forest Service citations. Why is this? Reliance on this sole source of information is not adequate. The water board should draw conclusions and recommendations from all best research available.

**Response:** *The references cited in the initial study adequately provide the scientific basis to support the mitigated negative declaration.*

4. **Comment:** Item 10 on page 3 of the waiver states there are higher rates of mass wasting in clearcuts. Research shows that mass wasting in forestry activities is more closely associated with roads and than silvicultural prescriptions. The statement by the Water Board is misleading especially to a nonprofessional reader in that the statement seems to indicate that instability is more closely related to clearcuts, which is simply not true. Also, the silvicultural recommendation is disingenuous in that it automatically links failures with delivery. The North Coast Regional **Water Quality** Control Board (emphasis added) should be concerned specifically with delivery and should recuse itself from any upslope occurrence or activity with no significant potential for delivery.

**Response:** *The overall goal is to minimize increasing rates of landslide related sediment delivery resulting from timber harvesting activities. Numerous studies have shown mass wasting from timber harvesting is associated with canopy removal as well as road construction. The spatial associations between timber harvesting and associated activities and increased rates of landsliding are well documented and the processes that trigger landslides are well understood.*

Forest canopy intercepts and reevaporates approximately 20% of storm rainfall (Reid, 2000). Removing the canopy increases the amount of effective rainfall that reaches the forest floor, which increases the amount of surface runoff and infiltration (Jones and Grant, 1996). Increased infiltration can raise groundwater levels causing

an increase in pore pressure. Increased pore pressure in the subsurface decreases effective soil strength, thereby increasing the risk of causing or reactivating landslides (Reid, 2000).

Another significant factor leading to an increase in pore pressures after removing trees is the decrease in the amount of groundwater removed by evapotranspiration. Keppeler (1994) found increases in the pore water pressures following clearcut logging in Caspar Creek. Increased peak flows were documented, particularly during storm events that occur early in the rainy season (Ziemer, 1981a). Recently clearcut slopes are more susceptible to mass wasting (landslides) due to loss of material strength provided by the root system of trees (Ziemer, 1981 b) and increased pore water pressures (Keppeler, 1994). Sufficient numbers of studies have observed increased rates of landslides on recent clearcuts, including Robison, et al. (1999), Schwab (1983), Swanson and Dyrness (1975), Gresswell et al. (1979), that a causal connection between clearcutting and increased rates of landslides can be assumed.

It is also quite likely the majority of timber harvest related landslides, are caused by construction of roads and skid trails and other types of earthworks on steep terrain with high landslide potential.

We acknowledge that not all landslides deliver sediment to watercourses. However, the potential for landslides to move downslope and deliver sediment to streams is quite high, and we suggest that an appropriate strategy to prevent and minimize landslide related sediment discharge is to minimize to the extent feasible, those practices that have the potential to increase rates of landsliding throughout a watershed.

5. **Comment:** Page 8, item 33, June 4, 2009 meeting is incorrect since date has not occurred.

**Response:** *It is standard practice to date tentative orders for the date the order will be considered by the Regional Board for adoption. In this case, the draft Order is scheduled to be heard on June 4, 2009.*

6. **Comment:** The waiver states that for less than 3 acre Conversions that the discharges must apply for and receive a 404 dredge & fill permit from the Army Corp. of Engineers and a submitted a notice of intent to comply with the Statewide Construction Storm Water Permit if the permittee is proposing new or upgraded culverts or if they plan on building. Why is the Water Board requiring another agencies permit? Why not let the other agencies deal with their own permitting process? Again the regional board is assuming impacts. What if the conversion is miles from the nearest creek? It is my understanding that timber operations, including 3 acre conversions, are exempt from the afore mentioned permits and hence forth, harvest activities are required to have a 1600 permit from the Department of Fish and Game for new and upgraded stream crossings.

**Response:** *The specific condition is intended to be a notification to a potential discharger that this waiver will not provide regulatory relief for other permits or licenses that may be required for certain activities beyond the scope of the Waiver. For example, any person that is converting timberland for a planned residential or commercial construction project on more than 1 acre is also required to obtain a 'Construction Storm Water Permit' from the state water resources control board. Similarly, conversion projects that fill in streams that are under the jurisdiction of the US army Corp of Engineers requires a 404 dredge and fill permit. There are exemptions, such as for agriculture activities.*

### **Humboldt Redwood Company, LLC**

1. **Comment:** We believe that if a fee is required that a one time application fee as proposed is advantageous. The annual fee as per the GWDR has proven to be burdensome due not only to a large annual cost, but in that the enrollment may last and require fees for a year or more beyond the completion of operations of the THP.

**Response:** *This is consistent with the current proposal of a one time application fee for enrollment in the waiver. In regard to the broader question of appropriateness of annual fees for enrollment in the GWDR; the current annual fee for the GDWR is tied to the lowest fee category established by the State Water Resources Control Board. Moreover, the average annual fee for WDRs in the northcoast RWQCB are the lowest of all regional boards statewide.*

2. **Comment:** Categorical Waiver F, Paragraph #4. This paragraph precludes timber harvest activities within the channel zone of a Class III watercourse, except for use and maintenance of roads and crossings. Is the intent not to allow for a waiver if the plan proposes new road construction across a Class III? Is the intent to not allow a plan that proposes cable logging that would require cable corridors to cross over a Class III channel zone? Cable logging is considered low impact, it is used quite often in harvesting today and in most THPs, requires corridors to be strung across Class III watercourses. Further clarifying operational exceptions is suggested.

**Response:** *It is not the intent of this condition to prohibit construction of new Class III watercourse crossings or cable corridors across Class III watercourses. To clarify this point, the language in Specific Condition #4 has been revised as follows:*

"No timber harvest activities shall occur within the channel zone of a Class III watercourse, except for use and maintenance of roads, construction and reconstruction of approved watercourse crossings, and to allow for full suspension cable yarding when necessary to transport logs through the channel zone."

3. **Comment:** Categorical Waiver F, Paragraph #5. This paragraph refers to Post-harvest stocking requirements for the project to be outside of the WLPZ's. The requirement refers to a 65% post harvest canopy closure. I would suggest that the Board consider amending the requirement to replicate the current Forest Practice Rule, 913.2(a)(2)(A), which provides for an uneven aged management option with either a 125 (site I) or a 75 (sites II and III) square foot basal area retention standard. A numerical basal area standard is much easier to apply and enforce than a % of canopy requirement.

**Response:** *Condition number 5 of Categorical Waiver F requires "Post harvest stocking within the Project area shall comply with the unevenaged stocking requirements of the FPR or in the case of evenaged harvesting methods shall maintain a canopy closure of at least 65% comprised of commercial species at least 30 feet in height." This condition allows unevenaged management stocking as per the Forest Practice rules in areas where unevenaged management is conducted. Where an evenaged management prescription is proposed the stipulation requires retention of 65% canopy composed of commercial species at least 30 feet in height.*

4. **Comment:** Categorical Waiver F, Paragraph #6: The first paragraph allows for alternatives to be proposed for meeting the Basin Plan temperature objective. We appreciate the opportunity to propose an alternative approach as we believe that you will find that the HRC Habitat Conservation Plan (HCP) will provide equal or better protection.

**Response:** *It is important that the context of what is required for compliance with the temperature objective is understood. The temperature objective requires recruitment and retention of natural shade. Natural shade is defined in TMDLs adopted by the Regional Board, as "The site potential shade on a watercourse as determined by the site potential naturally occurring vegetative community and topographic configuration."*

*Adjusted Potential Effective Shade:* The percentage of solar radiation attenuated and scattered before reaching the stream surface by the potential vegetative conditions, reduced by 10% to account for natural disturbances such as fire, wind throw, disease, and earth movements that reduce the actual riparian vegetation below the site potential.

*Potential Vegetation Conditions:* The most advanced seral stage that nature is capable of developing and making at a site in the absence of human interference. Seral stages are the series of plant communities that develop during ecological succession from bare ground to the climax community.

*Natural Receiving Water Temperatures:* The water temperature that result when the environmental factors that influence stream temperature have not been altered by human activities.

Landowners with HCPs will have the opportunity to demonstrate on a project specific basis that the riparian management strategy included in the HCP does meet the requirements of the Basin Plan Temperature Objective.

5. **Comment:** Categorical Waiver F, Paragraph #6 (b). This paragraph deals with single tree shade issues when the existing shade canopy of the WLPZ's are under the standard of Paragraph 6 (a). As written, the problem with this is twofold. The first issue is with the requirement to leave trees outside of the WLPZ's that may provide shade to a Class I or Class II watercourse. With the assumption that the plan is not harvesting within the WLPZ and that the plan area outside of the WLPZ is proposed for uneven aged silviculture, the chance that a significant "hole" in the shade canopy would develop from cutting trees outside of the WLPZ is marginal. If this requirement is enforced as written, one would have to review trees that may be up to 1,000 feet or more away from the watercourse and providing little shade. We would suggest that you reconsider this requirement or at a minimum, change the wording in the paragraph from 'or' to 'and':

b. All trees that are providing shade to Class I and Class II streams during critical summer months (i.e. June-September), whether the trees are inside or outside the WLPZ, shall be retained, when the overstory canopy within the first 75 feet of a Class I WLPZ (50 feet for Class II WLPZs) is less than 85% or the majority of trees are below their full site potential height, or and when the overstory canopy beyond the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs) is less than 65% or and the majority of tree are below their full site potential height. Any shade trees which must be retained shall be marked as a "leave tree". Alternative percent shade retention received in writing may be approved by the Executive Officer, if the Discharger demonstrates that such an alternative provides equal or better protection.

We would also hope for exceptions to the requirement for the creation of small holes that may occur in the canopy to facilitate cable logging corridors.

**Response:** *Staff disagrees that this requirement will require evaluation of shade provided by trees 1000 feet away from the watercourse. The intent of this condition is to ensure that natural shade is maintained and recruited on watercourses to enhance, preserve, and restore stream temperatures in compliance with the Basin Plan. If a riparian shade or buffer strip is of sufficient size and density to provide natural shade conditions in the foreground of the buffer, then the requirement to consider trees farther away would not be necessary.* Information. Please consider that natural topographic shading is part of the definition of natural shade. See the answer to Comment #4 above for more,

We agree that the instances when a significant "hole" in the shade canopy would develop from cutting trees outside of the WLPZ are rare. However, this situation does arise and has been observed in the field. This condition should ensure compliance with

the Basin Plan, and situations where the removal of trees lead to increases in solar energy must be addressed, regardless of whether the trees are in or out of a WLPZ.

6. **Comment:** The second issue within Paragraph #6 (b) is the requirement to mark shade "leave trees". It is not clear as to the extent of the marking requirement. If the WLPZ is not proposed for harvest or the area outside the WLPZ meets the uneven aged retention standard, there is not need to mark leave trees.

**Response:** *In the event that a Timber Harvesting Plan contains no harvest watercourse and lake protection zone, then it is reasonable to not mark leave trees. In contrast, when harvesting in the buffer strip is proposed, then it is reasonable to require permanent retention marking of all leave trees that are providing shade to the watercourse.*

### Comments from the California Forestry Association

1. **Comment:** CFA encourages the Regional Board to postpone adoption of the proposed draft Order No. R1-2009-0038 until the California State Board of Forestry and Fire Protection [BoF] completes its science-based review and amendment to the California Forest Practice Rules [FPRs] that protect watersheds.

**Response:** *Comment noted.*

2. **Comments:** The BoF released draft amendments to the T/I Rules for public comment on May 8, 2009 and is committed to adopting of any regulatory amendments by October 2009 for implementation on January 1, 2010. CFA recommends that you extend the current Categorical Waiver for another year while the Board of Forestry completes its review and amendment process of the T/I Rules.

**Response:** *Regional Board staff do not believe the proposed waiver creates any conflict with current amendments to the T/I Rules that may be considered by the Board of Forestry. Moreover, there are several reasons to not postpone the Regional Board's consideration of the tentative Revisions to the Waiver. The simplest reason is that the waiver will expire and landowners and RPFs would be unable to begin harvesting of any new projects without an adopted Categorical Waiver. Furthermore, the Board would receive valuable public input and have an opportunity to discuss and debate the issues in a public forum.*

### Comments from the California Department of Forestry and Fire Protection (CAL FIRE)

The following is a summary of excerpts of comments submitted by Mr. Crawford Tuttle, Chief Deputy Director of CAL FIRE on May 8, 2009. Regional Board is providing a

single comprehensive response to the comments because of the interrelated nature of the comments. The full text of CAL FIRE's letter is included in Attachment 3 of this item.

**Concern:** Specific Conditions of Categorical Waivers E and F are inconsistent with current Forest Practice Regulations and Forest Practice Act Direction - It does not appear that Water Board staff has determined that operations conducted in conformance with approved NTMPs pose a threat to water quality. In the absence of such findings specific to an approved NTMP, operations can occur without further discretionary review by CAL FIRE.

**Concern:** Specific Conditions of Categorical Waiver E and F addressing canopy retention standards above those of the Forest Practice Rules attempt to govern the conduct of timber operations, and therefore, exceed the authority of the Regional Water Board.

**Concern:** Specific conditions of the Categorical Waiver addressing canopy retention standards above those of the Forest Practice Rules would require changes to approved NTMPs. CAL FIRE does not have the authority to require such changes and therefore the Specific Conditions of the Categorical Waiver are inconsistent with PRC Section 4593 (c) of the Z'Berg-Nejedly Forest Practice Act.

**Concern:** The Proposed Waiver Places a Significant Workload on the CAL FIRE. If the argument can be made that CAL FIRE should process amendments associated with incorporating the "Specific Conditions" criteria into an approved NTMP and enforce these conditions, this would add to staff workload.

**Concern:** There is no scientific basis to establish separate watercourse protection

**Concern:** Waiver inspection plan and reporting requirements duplicate the requirements of the Forest Practice Act.

**Concern:** At least two findings under the category of Land Use and Planning in the CEQA Initial Study supporting the preparation of a Mitigated Negative Declaration for the Waiver not correct.

**Response:** *CAL FIRE raises objections to Specific Conditions of Categorical Waiver E and F for being inconsistent with the Forest Practice rules, particularly in the context of nonindustrial timber management plans (NTMP) already approved by CAL FIRE. Much of the concern appears to stem from ambiguity regarding the procedure governing these specific conditions and whether their enforcement will add an additional workload to CAL FIRE. As explained in more detail below, the proposed Waiver conditions are separate water quality provisions adopted independently pursuant to the Clean Water Act and Porter-Cologne Water Quality Act. They are not expected to create any additional workload for CAL FIRE for NTMPs already approved by that agency.*

*Regional Board staff has proposed revisions to the tentative order to help clarify this point accordingly.*

A nonindustrial timber management plan (NTMP) is a permit that applies to portions of a property consisting of less than 2500 acres of timberland, subject to conditions imposed in the permit. Like a THP, the permit serves as a functional equivalent document under CEQA, must conform to the FPRs, and must be prepared by a licensed RPF. Once approved, the NTMP is valid in perpetuity and requires notice to CAL FIRE before operations begin. An owner may not take any action which “substantially deviates” from the approved plan unless an amendment is filed and CAL FIRE’s Director determines that the amendment is in compliance with the FPRs in effect at the time the original NTMP was approved. (Pub. Res. Code, § 4593.8.)

An NTMP is identical to a THP in the land use activities it authorizes and the threat that activity poses to water quality, except that water quality concerns are heightened because of the long-term nature of the permit. Some were approved as far back as the early 1990s, where it has been demonstrated that the FPRs are inadequate to fully protect water quality. Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature under section 303(d) of the Clean Water Act. Discharges of sediment resulting from past land use activities, with timber harvest being one of the leading sources, are recognized as major contributing factors causing the impaired conditions. Just as new operations are subject to updated and more protective water quality provisions, the same restrictions should apply to ongoing operations under an NTMP.

The proposed Waiver adds conditions designed to meet Basin Plan temperature objectives. The scientific reasoning behind requiring additional canopy is the wide-spread and continued listings of waterbodies in the north coast as impaired from unnaturally high water temperatures. In all cases, shade (and canopy) has been identified as significantly affecting water temperatures. Scientific modeling based on data collected in the Scott and Shasta river watersheds provided a conservative estimate that 85% canopy would meet the Basin Plan water quality objective for temperature. We have seen no proof that the FPR minimum 50% canopy retention for fish-bearing streams maintains “natural receiving water temperature” as required in the Basin Plan water quality objective for temperature. Additionally, the proposed Waiver includes an option to propose alternatives in recognition of site specific conditions.

CAL FIRE asserts that Specific Conditions of Categorical Waiver E and F addressing canopy retention standards above those of the Forest Practice Rules attempt to govern the conduct of timber operations, and therefore, exceed the authority of the Board of Forestry and CAL FIRE. This is incorrect. While Public Resources Code sections 4551 and 4551.5 do provide the Board of Forestry and CAL FIRE the mandate and authority to adopt forest practice rules and regulations which govern the conduct of operations, they do not preclude another agency with resource protection mandates from requiring additional measures to meet their regulations. The Regional Water Board has independent authority and obligations under the Clean Water Act and Porter-Cologne Water Quality Act to impose

additional constraints on timber operations to protect water quality. The California Supreme Court has expressly rejected the argument that the Z'berg-Nejedly Forest Practice Act of 1973 provides the exclusive, "one stop" regulatory process for proposed logging activity that already incorporates detailed consideration of water quality impacts. (Pacific Lumber Company et al., v. State Water Resources Control Board (2006) [relying on the Forest Practice Act's savings clause, which provides: "No provision of this chapter or any ruling, requirement, or policy of the [Board of Forestry] is a limitation on...the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer".]) "The savings clause can be read as consistent with—and indeed a vital part of—a regulatory scheme that encourages interagency teamwork in the THP approval process by providing forums for collaboration and the airing of any disagreements that may arise, but not at the cost of stripping state agencies of their respective authority to protect resources that may be affected by logging." (Id.)

The Regional Water Board and its staff support interagency teamwork. In exercising the Regional Water Board's independent authority, it is our intent to build on the FPRs and add conditions only as necessary to fully protect water quality. The proposed Waiver contains conditions that are meant to be in addition to, not in conflict with, the Forest Practice Rules. Nor is our intent to impose conditions that increase the workload of CAL FIRE or require that agency to conduct activities not authorized by its own statute and rules. Additional water quality conditions should not trigger the requirement to file an amendment of a NTMP. Operations that contain more stringent environmental protections should not be construed as an action that "substantially deviates" from the approved plan and therefore requiring an amendment under Public Resources Code section 4593.8. It is not clear whether these conditions would even require a landowner to report any changes to CAL FIRE as "non-substantial deviations" from the plan under Public Resources Code section 4593.9. The proposed Waiver no longer contains language requiring a NTMP permittee to amend the plan to accommodate additional requirements for the protection, maintenance, and restoration of water quality. The current CEQA analysis accompanying the proposed Waiver addresses the additional special conditions in the Waiver.

We also understand and share the desire for regulations to be developed that meet all agency needs. While the process to evaluate and modify the so-called "T/I Rules" has included substantial involvement of the water boards and meets our needs in many ways, there are areas of disagreement with regard to the protection of water quality. For one, applying the rules only to the limit of anadromy ignores the upstream cold water beneficial uses that the water boards are charged with protecting, that warm upstream waters can impact downstream areas, and that there are cold water beneficial uses in water bodies that do not contain listed anadromous species. At this time, staff is actively involved in reviewing the latest proposed revisions to the T/I rule package. The Scientific Review Panel appointed by the BOF has publicly stated that there is a "serious disconnect between the science, collective opinion of scientific experts, the bulk of the scientific literature and the [April 2, 2009] BOF Threatened or Impaired Watersheds Rule Review Draft Regulatory Proposal." The Panel recommended delaying approval of the proposed rule package until further analysis and consideration of more scientifically based options to riparian

management that may improve protection of the beneficial uses of water. Regional Board staff sincerely hopes that the Board of Forestry addresses the Scientific Review Panel's concerns. It is too early in the Rule review process to know which proposed BOF regulations will be adopted into the FPR, or whether the Rules will incorporate the best available science and adequate water quality protections. Regional Water Board staff will continue to be involved in the process and attempt to close the gap as much as possible.

CAL FIRE also raises a workload issue in connection with the enforcement of the Specific Conditions in the Waiver. As explained above, Regional Water Board does not expect CAL FIRE to process amendments associated with incorporating the "Specific Conditions" criteria into an approved NTMP and enforce these conditions. We have removed any requirement or suggestion that a NTMP needs to be amended as a result of additional protective measures. We accept full responsibility for enforcing any water quality requirements not added to a THP or NTMP through the CAL FIRE process.

The Regional Water Board will, however, expect CAL FIRE to enforce these added conditions in newly approved NTMPs and THPs. The Forest Practice Rules provide a framework to include various agency requirements, and specifically require that a project approved by CAL FIRE be in conformance with the Water Quality Control Plan for the North Coast Region (Pub. Res. Code, § 916, 936, 956 (b)), and direct CAL FIRE to not approve any project that would cause a violation of the Basin Plan (Pub. Res. Code, §898.2, subd. (h)). The THP (and NTMP) review process is a CEQA functional equivalence process dependent upon the framework of the interdisciplinary process as established by the Z'Berg Nejedly Forest Practice Act and carried out under the Forest Practice Rules with CAL FIRE as the lead agency. The California Geological Survey (CGS), the California Department of Fish and Game (CDFG), and the regional water quality control boards (RWQCBs) are CEQA responsible agencies. CEQA responsible agencies provide guidance as to requirements that a project (THP) must meet in order to avoid significant impact to the environment. Each agency provides that guidance through the THP review process as regards their specific area of jurisdiction and legal mandate. The functional equivalence process relies in part on compliance with the regulatory requirements of other state agencies.

CAL FIRE, as the lead agency, already includes in approved THPs and NTMPs specific conditions that are in addition to the FPRs, from responsible agencies. Those conditions are enforceable and overseen by CAL FIRE. The proposed conditions in the Waiver are no different than what is already done through the CEQA functional equivalence process of reviewing and approving a THP or NTMP. We are not proposing a change in the process, nor a change to any responsibility or authority that CAL FIRE does not already have and exercise.

CAL FIRE submits that the Waiver Inspection Plan and Reporting Requirements duplicate the Requirements of the Forest Practice Act. In fact, the Waiver inspections are completely different from those required under the FPR. We have modified the

Waiver to clarify when “qualified professionals” are needed and when not. Also, a description of the expectations of an inspection has been clarified.

Basically, the preparation of the inspection plan should involve a “qualified professional,” however the actual inspections can be carried out by the landowner. We disagree with CAL FIRE’s characterization of the need for “technical monitoring assessments” and their contention that landowners will be unable to perform the inspections. Our experience to date has demonstrated that landowners not only are able to determine if an erosion site remediation is working properly, but also reap the benefits of learning about successes and failures as well as the opportunity to address some problems themselves while in the field. We also find that the landowner develops a level of responsibility associated with self-monitoring and takes pride in the role.

As far as CAL FIRE inspectors filling this role, we are pleased at the offer to provide that service, especially given the statements that our requirements cause additional workload and require CAL FIRE to enforce our requirements. Certainly, if a CAL FIRE inspection covers the needs of a landowner for the Waiver, we encourage the landowner to submit the inspection report. However, we cannot require that CAL FIRE perform the monitoring.

Joint agency inspections are an interesting concept in the context of landowner self-monitoring. While that requires twice the resources, it has the advantage of increasing understanding and knowledge about the agencies, their regulatory frameworks, and their logic in implementing their respective regulations. We welcome the opportunity, but must caveat that with considerations for staffing resources.

Finally, CAL FIRE suggests that at least two findings under the category of Land Use and Planning in the CEQA Initial Study supporting the preparation of a Mitigated Negative Declaration for the Waiver are not correct. Specifically, CAL FIRE asserts that the Waiver will conflict with specific plans such as NTMPs, SYPs, HCPs, and NCCPs. As explained previously, there is nothing in the proposed Waiver, nor its implementation, that will prevent any agency from exercising its authority and mandate (CAL FIRE included) or prevent a landowner from implementing any requirement of another agency. While there may be regulatory overlap, which is common but not always efficient, the addition of specific conditions to allow the Regional Water Board to waive the issuance of Waste Discharge Requirements is not in conflict with any of those processes.

### **Comments from The Buckeye**

1. **Comment:** Landowners must hire a qualified professional to prepare an Erosion Control Plan (ECP) for their entire NTMP area. With NTMPs being an ownership wide planning document, this ECP must cover the entire property. This will include an inventory of all potential erosion sites, quantify potential sediment contribution and prescribe mitigation measures. This must be in place on the entire property by 2014.

**Response:** *We agree, the intent of the proposal is to require ECPs to cover the entire NTMP, however, this does not necessarily mean the entirety of a landowner's property will have an ECP. The issue of increased cost of completing an NTMP was raised during the public workshop held in Fortuna on March 24, 2009. In response to these concerns, Regional Water Board staff revised the proposed waiver condition timelines for submission of the ECP. The following points are intended to clarify concerns from the above comments:*

- a. The ECP will eventually be required to encompass an entire NTMP. NTMPs may not include an entire land ownership.
  - b. Landowners with NTMPs previously waived under Order No. R1-2004-0016, have one year (June 4, 2010) to begin submitting ECPs along with each NTO.
  - c. Landowners with NTMPs previously waived under Order No. R1-2004-0016 have until the first NTO submitted after June 4, 2014 to submit an ECP for the entire NTMP
  - d. Landowners enrolling NTMPs for first time in Categorical Waiver F must submit an ECP before their application is determined to be complete, A qualified professional is required to prepare the ECP, which would include an inventory of all controllable sediment discharge sources (CSDS), estimates of potential discharge volumes, and measures to prevent and minimize sediment discharge.
2. **Comment:** Within this ECP landowners are required to include a schedule as to when these mitigations will be done and landowners "shall implement according to that schedule until directed otherwise by the Executive Officer." Seemingly, this work must be done regardless of actual timber harvest activity in these areas or economic conditions.

**Response:** *Implementation of measures to prevent and minimize sediment discharge from CSDSs identified in the ECP is largely dependent on a schedule proposed by the Landowner. The implementation schedule should be based on the potential impacts to water quality and imminence of failure. The higher the threat, the greater the priority for addressing a site. The overall goal is to treat sites before they discharge sediment in amounts deleterious. The reasonableness, feasibility (cost), and access to a site are all part of the consideration to address a discharge site. We anticipate that it will be the norm, rather than the exception, that that goal can be achieved while scheduling corrective work at most sites concurrently with harvesting in the area.*

3. **Comment:** In addition, landowners must hire someone to prepare a Road Plan in conjunction with the ECP. This plan must contain, in part, the status of each road, including use restrictions, and a long term inspection and maintenance schedule. This maintenance schedule must include a schedule for upgrading all existing roads

to listed WQ standards. This Road Plan must be in place on the entire property by 2014 as well.

**Response:** *Regional Water Board staff revised proposed timelines for submission of the Road Plan in response to concerns expressed during the public workshop held in Fortuna on March 24, 2009 regarding the additional cost of hiring qualified professional to conduct additional work on existing NTMPs.* The following points are intended to clarify concerns from the above comments:

- a. Landowners would have five years after enrolling in the Categorical Waiver to submit a Road Plan,
- b. Landowners with NTMPs previously waived under Order No. R1-2004-0016 must apply for coverage under Order No. R1-2009-0038 by the first NTO after June 4, 2010,
- c. Landowners are not required to submit the Road Plan until five years after that NTO. The timeline for submission of the Road Plan is tied to NTOs, not the date approval of the Waiver,
- d. If Roads do not meet the standards specified in Category E, landowners would submit a proposed implementation schedule to improve road conditions,
- e. It is likely that most, if not all, work to upgrade roads will be conducted concurrently with harvesting,
- f. Standards are generally equivalent with those of the Forest Practice Rules. Perhaps, the main thing missing from the FPR road rules is an implementation schedule and road maintenance for those time periods between NTOs,
- g. Compliance with 14CCR 923.0.2(f) would meet the Road Plan requirement for Categorical Waiver F.

4. **Comment:** In order to address these concerns we recommend the following:

For all NTMPs approved after the adoption of the new waiver (2009-0038) – prepare an ECP for the entire NTMP area as proposed in the draft waiver. The schedules for addressing individual sites could be written in a manner that would outline the concept of general timing of when the road issue would be addressed rather than a specific date. For example, an ECP structured such that "sites A, B, & C will be addressed when operations are active in area Y" would be far more helpful than "sites A, B, & C will be addressed in Year Y." The first option ties the road fixes together with the ability to pay for those activities, whereas the second option does not.

For all previously approved NTMPs - maintain the process of developing an ECP for each active operation through the notice of timber operations (NTO), insuring a timely fix or repair to all potential erosion sites associated with active management. Retroactively going back and assimilating ECP data on the entire NTMP can be a major expense with no on-the ground benefit.

The above recommended solutions would make the fixes much more economically viable. As a result of either of these processes the road systems would be upgraded over time and maintained. This, in fact, would eliminate the need for a specific "Road Plan" which is only documentation of what would be done anyway. Therefore, we recommend deleting the Road Plan section 6.

The issue is not reluctance to practice good land stewardship; fixing and repairing all potential erosion sites and maintaining our lands in an appropriate and acceptable manner. Over time, all of the concerned sites will be addressed as these areas are included under active harvest entries with the notice of timber operations (NTOs). NTMP holders are obligated to do this. Timing is the issue. In addition, there is the economic burden of hiring the "Qualified Professional" to prepare the documents and provide the field review required under this process which would all occur "after the fact" or a previously approved NTMP. This is a considerable additional cost. Landowners are not considered qualified to do this work. Secondly, we are required to complete all site mitigations on a set schedule or timeline that has no consideration for economics to logistic ability to access these sites. Please remember that NTMP holders have agreed to a minimum harvest regime in exchange for consistent, cost effective, rules and conditions.

**Response:** *At present, Regional Board staff does not recommend omitting Road plan requirements. As discussed previously, landowners or their representatives would propose an implementation schedule, subject to review by the Executive Officer. The implementation schedule should be guided by prioritization, which considers potential impacts to beneficial uses and imminence of failure. Greater flexibility is generally allowed for low and moderate priority sites than high priority sites. For existing NTMPs, landowners have a minimum of five years or more to complete their inventory of CSDSs for the entire NTMP area.*

It should be noted that a Road Plan is not identical to an ECP, although there may be overlap in these two plans. The ECP is intended to identify and prioritize correction of existing controllable sediment discharge sources from throughout the logging area. A Road Plan should be used more as a strategy to prevent and minimize road related sediment discharges, by better road maintenance and upgrading of road standards throughout the NTMP area over time.

Many landowners are already investing considerable resources upgrading roads to prevent and minimize sediment discharge. Whether work is conducted during the actual operations of a THP/NTMP pursuant to the FPRs, by landowners practicing good land stewardship, and/or with support of government grants, all such road work should be documented and included in the Road Plan. It is our hope that for the most part the implementation schedules will coincide with the overall management strategies of landowners.

5. **Comment:** In addition to the ECP and Road Plan, stipulations regarding the canopy retention set forth in Specific Conditions 5 (b) give rise for concern. The stipulation that "all trees providing shade to Class I or Class II streams during critical summer months" ..... "whether the trees are inside or outside the WLPZ or streamside buffer zone, shall be retained" causes great concern.

This requirement seems to apply any time that the 85% or 65% canopy retention requirements cannot be met (see 5 (a) as proposed) or "when the majority of trees are below their full site potential height." At best this is confusing and at worst it could be interpreted to mean that until the majority of trees providing shade are "old growth" in height all of them must be retained. As this section is written, it appears that even if you have 85% or 65% canopy, if this is made up of trees "below their full site potential height," all trees providing shade must be retained. If this is the intent it is extremely onerous, if it is not the intent it is very confusing.

In order to address this concern we recommend deleting Specific Conditions 5 (b) and utilizing the standards indicated in Specific Conditions 5 (a) of the draft and not allowing harvest to take place in the WLPZ or streamside buffer zones if the specified conditions don't exist. Identifying trees in excess of 150 feet from the watercourse that "may" provide shade at a given time of day will be extremely difficult and confusing. The need to determine if "the majority of trees are below their full site potential height" is subjective and confusing as well.

**Response:** *We recognize that it is a difficult standard to achieve and to enforce. As a result, the text of the draft Order has been revised to omit the phrase, "site potential tree height". Nevertheless, we believe that it is useful to retain trees that provide shade to the watercourse when canopy levels in the WLPZ do not meet the minimum requirements, or when the majority of trees in the WLPZ are immature to the extent that they do not provide sufficient shade.*

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