

Categorical Waiver of Waste Discharge Requirements
For
Discharges Related to Timber Harvest Activities
On Non-Federal) Lands in the
North Coast Region

The following is a draft of proposed revision of the current Timber waiver Order no. R1-2004-0016, that will be discussed at the March 24th workshop in Fortuna.

This draft is intended to facilitate interested parties to provide comments and suggestions at the workshop.

Following the workshop the draft will be revised to reflect comments received and released to the public through the State Clearing House for a minimum 30-day public review and comment period prior to a water board hearing, tentatively set for June 4, 2009 in Santa Rosa.

This draft version does not include Regional Water Board findings. The findings precede Section I and will be included in subsequent drafts.

The Draft Revised Categorical Waiver includes minor changes (i.e., grammar and document organization) and substantial changes (i.e., revising the categorization scheme, eligibility criteria, and application and monitoring requirements).

Substantial Changes are presented below for the purposes of providing interested parties a concise summary of the most important revisions.

The following is a summary of *substantial* changes to the Waiver. This Section is not intended to be included in the Order. Please contact Jim Burke of the Regional Water Board at (707) 795-7235 with any questions regarding the draft Categorical Waiver:

Begin Summary of substantial changes:

Erosion Control Plans:

1. **Section I(E)(2)** (page 8): Landowners will have to develop an Erosion Control Plan (ECP) for the entire NTMP area prior to seeking coverage under the Waiver. These ECPs will be updated for each NTO. The current Categorical Waiver only requires ECPs for each NTO. Those CSDSs that cannot be accessed because an area has not been opened will not be feasible for repair at that time. They may be at a later date.
2. **Section I(F)(2)** (page 11): Landowners will have to develop ECPs for Timber harvest plans (THPs). No ECP is required for THPs under the current Categorical Waiver.
3. **Attachment B Subsection b** (page 24): Erosion Control Plans for THPs and NTMPs will have to include an inspection and reporting component, consisting of two inspections per year, pre and post winter. Inspections are to continue until termination for THPs and Cal Fire completion of an NTO.

Roads:

4. **Section I(F)(9)** (page 12): A new eligibility criterion is proposed for THPs: "Roads shall be hydrologically disconnected from watercourses to the extent feasible. Road segments that cannot be hydrologically disconnected from watercourses shall be treated to prevent and minimize surface erosion. Treatment may include seeding and mulching, rocking, slash packing, or other effective methods proposed by the Discharger"
5. **Section I(E)(7)** (page 9): Landowners will have to develop a long term management plan for roads (Road Plan) for NTMPs. The purpose of the Road Plan is to ensure that roads in the NTMP area are maintained on a regular basis and upgraded to current standards over time.

Eligibility criteria:

To ensure compliance with the Basin Plan Temperature Objective we propose the following be applied to THPs and NTMPs:

6. **Section I(E)(5)** (page 9) for NTMPs and **Section I(F)(6)** (page 12) for THPs: "Overstory canopy shall not be reduced below 85 percent within the first 50 feet for Class II WLPZs or streamside buffer zone; and not be reduced below 65 percent for the remainder of the WLPZ or streamside buffer zone." This is a change from the current Categorical Waiver, which required 70% overstory

canopy retention in the Class II WLPZ for THPs. There was no canopy retention standard for NTMPs beyond that required by the Forest Practice Rules.

7. **Section I(E)(6)** (page 9) for NTMPs and **Section I(F)(7)** (page 12) for THPs: If the overstory canopy retention levels described above are not present in the WLPZ, any trees providing shade to the watercourse during the critical summer months (June-September) must be retained, whether within *or* beyond the WLPZ. Alternative levels of shade retention may be approved, when received in writing, by the Executive Officer, if the plan submitter demonstrates such an alternative provides equal or better protection.

Stocking Standards for THPs:

8. **Section I(F)(5)** (page 12): Propose that for areas *outside* of the WLPZ, even aged post harvest stocking must maintain a canopy closure of at least 65% comprised of commercial species at least 30 feet in height. The current Categorical Waiver requires 75% canopy closure.

A new sub-category has been created:

9. **Section I(F)(8)** (page 12): Propose that even aged post harvest canopy closure would not apply if no harvest is conducted within 300, 200, and 100 feet of Class I, II, and III watercourses, respectively. This essentially allows intensive harvesting, including clear cutting, with a robust no harvest buffer.

Application procedure:

10. **Section II(C)** (page 15): Landowner would not commence timber harvesting activities until they has received written notification from the Executive Officer stating that coverage under this Waiver is appropriate. The current Categorical Waiver does not require notification that a Project is covered.

Projects that were previously waived under the current Categorical Waiver:

11. **Section III** (page 15): THPs have one year after approval of the new Categorical Waiver to either complete the Project and terminate coverage. After one year, projects would have to apply for coverage under the new Categorical Waiver, including meeting the new eligibility criteria. NTMPs could wait until the next NTO to apply for coverage.

Fees:

12. **Finding:** We are being asked to consider funding these programs, at least in part, through fees assessments. Several options are possible. There is a placeholder in the proposed waiver language, and we will discuss options at the workshop.

[End summary of substantial changes](#)

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2009-00xx

Categorical Waiver of Waste Discharge Requirements
For
Discharges Related to Timber Harvest Activities
On Non-Federal) Lands in the
North Coast Region

The California Regional Water Quality Control Board, North Coast Region,
(hereinafter Regional Board) finds that:

Placeholder for Findings to support Order to be inserted at later time

THEREFORE, the Regional Board hereby approves and adopts the Negative Declaration and Initial Study prepared on this Order, and directs the Executive Officer to file all appropriate notices; and

Order No. R1-2004-0016 is hereby superseded. All dischargers subject to categorical waiver of Waste Discharger Requirements under this Order shall comply with the following:

SECTION I WAIVER OF Submittal of REPORTS OF WASTE DISCHARGE AND Waiver of WASTE DISCHARGE REQUIREMENTS FOR Timber Harvest PROJECTS ON Private (NON-FEDERAL) LANDS

This Order sets out general and specific conditions for dischargers to obtain categorical waivers of WDRs for certain timber harvest activities conducted on non-federal lands in the North Coast Region (Section II). The Order includes: application procedures, eligibility and submission requirements (Section III), waiver for Projects previously enrolled for a waiver of WDR under Order No. R1-2003-0116 (Section IV), and for termination of coverage (Section V). Definitions used in this Order are attached (Attachment A).

There are five (5) separate categorical waivers for new Projects (i.e. Projects not previously permitted or waived by the Regional Water Board). Each waiver category has a set of eligibility criteria, general conditions, and specific conditions when appropriate. The first step in seeking coverage under this Order is to determine if a given Project meets the eligibility criteria for one of five categories. For Projects that meet the eligibility criteria for a given categorical waiver, the Discharger must comply

with all the specific conditions specified in that category, as well as the general conditions necessary to obtain and maintain coverage under all waiver categories, starting with submittal of application documents described in Section II.

A. General Conditions that apply to all applications for Waiver:

The Discharger shall comply with each of the following conditions for all Categorical Waivers established by this Order:

1. An owner/operator (hereinafter referred to as Discharger) shall file the documents set out in Section I, as appropriate.
2. The Discharger shall comply with all applicable requirements and prohibitions specified in water quality control plans as modified, and policies adopted by the State Water Board.
3. The Discharger shall allow Regional Water Board staff entry onto the affected property for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section V.
4. The Discharger shall comply with a monitoring program, unless waived by the Category of Waiver or in writing by the Executive Officer.
5. The Discharger shall conduct timber harvest activities in compliance with the Forest Practice Rules and a THP or NTMP that has been approved by CAL FIRE. In addition, Forest Practice Rules and THP conditions (including mitigation measures identified and required pursuant to CAL FIRE CEQA process) that are intended to protect water quality shall constitute enforceable conditions under this Order.
6. [This condition addressing CEQA compliance left blank pending further legal review]
7. The Discharger shall notify the Regional Board in writing at least 45 days prior to any proposed aerial application of pesticides and 30 days for any proposed ground-based application of pesticides. The notification shall include the type of pesticide(s), method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality requirements.
8. Recommendations and mitigation measures proposed by Regional Board staff during the Project review and approval process are incorporated into the approved Project.

9. Discharger must resolve any Non-Concurrence that has been filed with CAL FIRE by Regional Water Board staff to the satisfaction of the Regional Water Board Executive Officer prior to enrollment in the waiver.
10. All new watercourse crossing construction or reconstruction shall occur under authority of local, state, or federal law, and a Streambed Alteration Agreement (Permit) when required by California Department of Fish and Game.
11. All amendments of THPs and NTMPs approved by CALFIRE shall conform to the Eligibility Criteria and Conditions set forth for the originally waived Project. Failure to do so is a violation of the Waiver and subjects Discharger to enforcement action and/or termination of Project waiver coverage.

Categorical Waiver B: Emergency, Exemptions, and 3-acre conversions

The following are waived from submittal of ROWD, THPs, or enrollment application. The threat to water quality by this category of waiver is diminimus. Therefore there is minimal additional application or reporting requirements beyond those already established by other regulations.

a. Timber Operations Pursuant to an Emergency Notice

Eligibility Criteria:

1. Projects that conform to the rules for Emergency Notice pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1052) administered by CAL FIRE
2. The Discharger has submitted an Emergency Notice for the Project to and has been accepted by CAL FIRE, and either: a) the Regional Water Board has received a copy of the notice of acceptance from CAL FIRE, or b) 5 working days, or 15 days for a fuel hazard emergency, have passed since submission of the Emergency Notice to CAL FIRE and the Emergency Notice was not returned to the submitter.

3. Specific Conditions: None

4. Application and/or annual fee for this waiver category: None

b. Exemptions as defined in Forest Practice Rules

Eligibility Criteria:

1. Projects that conform to the rules for Exemptions pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1038) administered by CAL FIRE
2. CAL FIRE has accepted the Notice of Exemption for the Project.

3. Specific Conditions:None

4. Application and/or annual fee for this waiver category: None

c. Conversion Exemptions (also known as 3-acre conversions)

Eligibility Criteria:

1. Projects that conform to the rules for Conversion exemptions pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1104.1) administered by CAL FIRE
2. The Discharger has submitted a Notice of Conversion Exemption for the Project to CAL FIRE that has been accepted, and the Regional Water Board has received a copy of the notice of acceptance from CAL FIRE.

Specific Conditions:

3. Enrollment under this waiver does not cover discharges to waters of the United States that may require additional permits from federal and state agencies. If road construction includes new or upgraded watercourse crossings for a development following conversion that impacts waters of the United States, the Discharger must apply for and receive a federal Clean Water Act section 404 dredge and fill permit from the US Army Corps of Engineers and accompanying water quality certification from the Regional Water Board.
4. If the less than 3-acre conversion is or will be for the purpose of construction development (for residence or commercial purpose of any type) the Discharger has also submitted a Notice of Intent to comply with the Statewide construction stormwater permit and has received enrollment notice prior to commencement of construction activities. This includes grading and land clearing for any type of construction of 1-acre or greater.
5. Application and/or annual fee for this waiver category: None

Categorical Waiver C: Projects in the Garcia Watershed

In the case of Total Maximum Daily Load Projects, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. The Executive Officer has determined that the Project is in compliance with the Garcia River sediment TMDL Action Plan.

Special Conditions: none

Application fee for this waiver category: Not determined.

Categorical Waiver D: Modified Timber Harvest Plan Projects

Eligibility Criteria:

1. The project meets the definition as a Modified Timber Harvest Plan pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1051) and has been approved by CAL FIRE.

Specific Conditions:

1. If road construction includes new or upgrading of watercourse crossings, the Discharger has submitted a Notice of Intent for the statewide dredge and fill permit and has received a Notice of Exemption for the statewide permit for the project.

Application fee for this waiver category: none

Categorical Waiver E: Nonindustrial Timber Management Plan (NTMP)

Eligibility Criteria:

1. The Project meets the definition as a Nonindustrial Timber Management Plan (NTMP) pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1090) and CAL FIRE has approved the NTMP.

Specific Conditions:

2. The Discharger develops and submits a Project specific Erosion Control Plan (ECP) for the entire logging area of the NTMP and the appurtenant roads used to access the logging site as specified in Attachment B. Typically, the ECP is incorporated into the approved NTMP. The ECP shall be updated for each submittal of the Notice of Timber Operations (NTO).
3. The Discharger shall propose a schedule to mitigate all controllable sediment discharge sources, and shall implement according to that scheduled until directed otherwise by the Executive Officer. Generally, CSDS sites shall be mitigated within the area identified in the NTO during the life cycle of the NTO.
4. The Discharger shall submit written notice to the Regional Board no less than least fourteen (14) days prior to commencement of timber harvest activities anywhere within the approved NTMP.

5. Overstory canopy shall not be reduced below 85 percent within the first 75 feet of the Class I Watercourse and Lake Protection Zone¹ (WLPZ) or streamside buffer zone, or within the first 50 feet for Class II WLPZs or streamside buffer zone; and not be reduced below 65 percent for the remainder of the WLPZ or streamside buffer zone.
6. All trees that are providing shade to Class I and Class II streams during critical summer months (i.e. June, July, August, and September), whether the trees are inside or outside the WLPZ or streamside buffer zone, shall be retained, when the overstory canopy within the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs or streamside buffer zones) is less than 85% or the majority of trees are below their full site potential height, or when the overstory canopy beyond the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs or streamside buffer zones) is less than 65% or the majority of trees are below their full site potential height. Any shade tree which must be retained shall be marked as a "leave tree". Alternative percent shade retention may be approved, when received in writing, by the Executive Officer, when the discharger demonstrates such an alternative provides equal or better protection.
7. Road Plan
The Discharger shall develop and submit a long-term management plan for the road system (Road Plan), designed with the goal of preventing and minimizing sediment discharge from roads in the NTMP area. The Road Plan shall at a minimum describe all roads and watercourse crossings within the logging area as well as long term management measures designed to prevent and minimize sediment discharge. The road system described in the Road Plan shall be constructed, reconstructed, and maintained to prevent or minimize sediment discharge to streams. This shall be accomplished by dispersing road surface drainage, preventing surface erosion from entering streams, protecting stream crossings from failure or diversion and preventing failure of unstable fills, which would otherwise deliver sediment to streams.

The road plan shall include, at a minimum:

- The location of all roads and watercourse crossings within the logging area;
- The current status of each road, including road surface material, road and watercourse design, and use restrictions;
- The future plan and schedule for each road; and
- A long term inspection and maintenance schedule designed to ensure that prevention and minimization measures functioning as intended and to

¹ WLPZ is defined in the Forest Practice Rules 14CFR 916

identify and correct any problems that could cause sediment discharge in a timely manner.

Roads (including road prism and watercourse crossing drainage structures) that are constructed or reconstructed after enrollment in Categorical Waiver E, shall at a minimum, comply with the standards listed below.

Existing usable roads will be upgraded to the standards below according to a schedule developed by the Discharger and approved by the Executive Officer of the Regional Water Board. Roads that are not needed as part of the long-term road system and that discharge or threaten to discharge earthen material to waters of the state shall be scheduled as necessary for abandonment or obliteration as Controllable Sediment Discharge Sources under the Erosion Control Plan.

Stream Crossing:

- All stream crossing must have a drainage structure designed for the 100 year return interval discharge and pass any reasonable amount of debris;
- Stream crossings must be designed so that in the event of plugging, the stream is not diverted out of its channel;
- Stream crossing inlets and outlets must be protected from erosion;
- Stream crossing outlets must not discharge onto road fill;
- Stream crossing inlets must have low potential for plugging;
- Culvert inlet, outlet, and bottom must be open and in sound condition;
- Fills must be stable, and unstable fills are removed or stabilized;
- Road surfaces and ditches must be disconnected from streams;
- Decommissioned roads must have all stream crossings completely excavated; to original grade; and
- Fish bearing streams must have no barriers to fish passage

Road and Landing Fills

- Unstable and potentially unstable road and landing fills are removed; and
- Excavated spoil is placed in locations where earthen material will not discharge to a stream

Road Surface Drainage

- Road surface runoff must be dispersed by outsloping where feasible;
- Road surfaces and ditches are disconnected from streams. Road segments that cannot be disconnected from streams shall be stabilized to prevent surface erosion;
- Ditches are drained frequently by functional rolling dips or ditch relief culverts;
- Outflow from ditch relief culverts does not discharge to streams, onto erodible fill, or onto active or potential landslides; and

- Gullies are dewatered to the extent feasible

Application fee for this waiver category: Yes. Amount of fee to be determined.

Categorical Waiver F: Other Projects (Timber Harvest Plans and Other Timber Harvesting Projects)

Other Projects include standard THPs, or other timber harvesting activities authorized by another lead agency pursuant to CEQA, the following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Any other Project, such as a Timber Harvest Plan (THP) under the FPRs approved by CAL FIRE, or other timber projects authorized by another lead agency pursuant to CEQA

Specific Conditions:

The following specific eligibility criteria shall apply to timber harvest plans and other timber projects. The Discharger shall prepare a brief summary describing how the project meets each of the eligibility criteria listed below. The summary may be incorporated into the plan or project, or may be submitted along with the application seeking coverage under the Categorical Waiver:

2. Dischargers shall develop a site specific Erosion Control Plan for the entire logging area and include that in the approved THP or timber project as specified in Attachment B, which shall be fully implemented prior to the final project completion.
3. Timber harvest activities on all landslides and geomorphic features related to landsliding shall be designed to prevent and minimize sediment discharge related to landsliding. Prior to timber harvest activities on landslides or geomorphic features related to landsliding,² the discharger shall prepare and submit a geologic report. The report, to be prepared by a licensed California Professional Geologist, shall, at a minimum, be prepared in conformance with California Geologic Survey (formerly the California Department of Conservation Division of Mines and Geology) Note 45. The geologic report shall address the degree to which proposed Project activities on landslides or geomorphic features related to landsliding increases the risk of sediment delivery to watercourses, identifies current condition of down slope waters, estimates the amount of sediment that could be delivered from the slides or unstable areas from Project activities, and

² Landslides and geomorphic features related to landsliding are defined by California Geologic Survey formerly (California Department of Conservation Division of Mines and Geology Note 50.

identifies and incorporates into the Project recommendations for preventing and minimizing the discharge of sediment from these sites.

4. No timber harvest activities shall occur within the channel zone of a Class III watercourse, except for use and maintenance of roads and crossings.

Projects that meet eligibility criteria 4, 5, and 6 are not required to meet eligibility criteria 7. Projects that meet eligibility criteria 7 are not required to meet eligibility criteria 4, 5, and 6.

5. Post harvest stocking within the Project area shall comply with the uneven aged stocking requirements of the FPR or in the case of even-aged harvesting methods shall maintain a canopy closure of at least 65% comprised of commercial species at least 30 feet in height.
6. Overstory canopy shall not be reduced below 85 percent within the first 75 feet of the Class I Watercourse and Lake Protection Zone ³(WLPZ) or streamside buffer zone, or within the first 50 feet for Class II WLPZs or streamside buffer zone; and not be reduced below 65 percent for the remainder of the WLPZ or streamside buffer zone.
7. 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 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 the majority of trees are below their full site potential height. Any shade tree which must be retained shall be marked as a "leave tree". Alternative percent shade retention may be approved, when received in writing, by the Executive Officer, when the discharger demonstrates such an alternative provides equal or better protection.
8. No trees shall be harvested within 300 feet of a Class I watercourse, 200 feet from 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,
9. Roads shall be physically hydrologically disconnected, to the extent feasible, from allowing storm runoff from discharging into watercourses. Road segments that cannot feasibly be hydrologically disconnected from watercourses shall be treated to prevent and minimize surface erosion. Treatment may include seeding and mulching, rocking, slash packing, or other effective methods proposed by the Discharger.

³ WLPZ is defined in the Forest Practice Rules 14CFR 916

10. No Timber harvest activities, including, log hauling, ground based yarding, road construction, road reconstruction, or road rocking shall occur during the winter period (November 15 to April 1). This does not include work necessary to apply or maintain erosion control management practices or and sediment control to reduce sediment discharge.
11. No timber harvest activities shall occur during measurable rain events (defined as greater than ¼" in a 24-hour period). This does not apply to maintenance of existing roads and watercourse crossings, use of non-mechanized timber falling, fuels treatment such as hand piling and burning, hand fire line construction, or other activities which do not involve the use of heavy equipment or timber hauling,
12. Sediment prevention plan
The Discharger shall develop and submit a Sediment Prevention Plan when any of the following are contained in the approved THP, NTMP, or other timber project:

- a. Construction of new skid trails on slopes over 40% within 200 feet of a watercourse,
- b. Construction of more than 1,000 feet of new roads,
- c. Heavy equipment will be used within a WLPZ, equipment limitation zone, or streamside buffer zone of a watercourse, except for the following situations:
 - use of existing permanent roads,
 - use of existing bridges and culverts as skid trail crossings and maintenance of associated drainage facilities or structures,
 - upgrading of roads to permanent standards by rocking, paving or other suitable surfacing materials to establish a stable operating surface prior to the start of hauling operations
- d. Ground based heavy equipment operations on slopes exceeding 50%,

A Sediment Prevention Plan is a plan designed and implemented to prevent and minimize the discharge of sediment to waters of the State and submitted as part of a Project seeking coverage under the Categorical Waiver. A Sediment Prevention Plan differs from an Erosion Control Plan in that it is intended to prevent and minimize creation of *new* sources of sediment discharge from operations conducted under the current Project, while an ECP is intended to prevent and minimize sediment discharge from *existing* sources.

The Sediment Prevention Plan (SPP) shall be developed by a qualified professional. The Sediment Prevention Plan (SPP) shall include site specific measures that can reasonably be expected to prevent and minimize creation of new sediment discharge sources from proposed timber harvest

activities. The sediment prevention plan must include a map clearly showing the location(s) of the site(s) where prevention and minimization measures described in the plan will be implemented.

Application fee for this waiver category: Yes. Amount of fee to be determined.

SECTION II: APPLICATION PROCEDURES AND SUBMISSION REQUIREMENTS FOR CATEGORICAL WAIVERS

The first step in seeking coverage is to determine if a given Project meets one of the five Waiver categories. If the Project meets the eligibility criteria for a given categorical waiver, the Discharger must comply with all the general and specific waiver conditions, starting with submittal of the application documents, as required.

If a Project does not meet the eligibility criteria for one of the categorical waivers, Discharger must seek enrollment under an individual waiver, general WDRs, individual WDRs, or watershed wide WDRs.

Generally, the Regional Board receives approved or accepted Project documents from CAL FIRE or the lead agency. These documents are part of the record for each categorical waiver. However, the discharger is responsible to ensure the Regional Board receives the approved THP, NTMP, environmental document, ECP or other documents that may be part of an approved THP, NTMP, or other timber project.

- A. To seek coverage for Projects under a categorical waiver set out in Section I Categorical Waivers C - F, the Discharger must file a "Certification Notice." The Certification Notice must be signed by the Discharger and must state that the Discharger understands and intends to comply with all water quality requirements and the eligibility criteria and conditions, general and specific, of the appropriate categorical waiver. The Certification Notice must also identify the type of categorical waiver (Section I Categorical Waiver C: Total Maximum Daily Load Plan Projects; Categorical Waiver D: Modified Timber Harvest Plan Projects; Categorical Waiver E: Nonindustrial Timber Management Plan Projects, or Categorical Waiver F: Other Projects) being sought.
- B. The submission of a Certification Notice is not required for projects qualifying for coverage under the categorical waiver set out in Section I Categorical Waiver B: Emergency and Exemption Projects. Such Projects must, however, meet the eligibility criteria and conditions, both general and specific, to obtain and maintain coverage under Section I Categorical Waiver B.
- C. Unless other timeframes are specified, projects that comply with the eligibility criteria, conditions, and procedures for a categorical waiver pursuant to Section I Categorical Waiver C: Total Maximum Daily Load Plan Projects, Categorical Waiver D: Modified Timber Harvest Plan Projects, Categorical Waiver E: Nonindustrial Timber Management Plan Projects, or Categorical Waiver F may

commence no sooner than ten (10) working days following receipt of a complete Certification Notice.

For projects applying for coverage under Categorical Waiver C-F, the Discharger may not commence timber harvesting activity until the Discharger has received written notification from the Executive Officer stating that coverage under this Waiver is appropriate. The Regional Board Executive Officer will notify the Discharger in writing if coverage under the categorical waiver is determined to be inappropriate. It is anticipated that projects which have had thorough Regional Water Board staff involvement in the review and approval process will receive written notification of coverage within ten (10) working days of receipt of a complete Certification Notice.

- D. For an approved Program Timberland Environmental Impact Report (PTEIR), the proponent of each future Program Timber Harvesting Plan (PTHP) would need to seek coverage under this Order for each new PTHP.
- E. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under Water Code sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.

SECTION III: WAIVER OF REPORTS OF WASTE DISCHARGE AND WASTE DISCHARGE REQUIREMENTS FOR PROJECTS PREVIOUSLY WAIVED UNDER ORDER NO. R1-2004-0016

Projects that were previously waived under Order No. R1-2004-0016 may be covered under this Order provided they qualify for one of the Categorical Waivers described in Sections II(B)-(F) and meet the applicable eligibility criteria and conditions. Projects that were previously waived under Order No. R1-2004-0016 shall have until June 4, 2010 to either complete the Project and terminate coverage under the previous Order or apply for coverage under this Order. Those Projects applying for coverage under this Order may have to be amended to meet the applicable eligibility criteria and conditions. NTMPs must apply for coverage upon the next notice of timber operations following adoption of this Order.

SECTION IV: TERMINATION OF COVERAGE

- A. In order to terminate under a categorical waiver for a Project enrolled in the Categorical Waivers C, E, and F of this Order, a Discharger must submit, forthwith upon completion of the Project, a 'final certification' signed by the landowner certifying that: (1) the Project was conducted in conformance with the approved or accepted Project and with all applicable provisions of this Order;, and (2) discharges resulting from the Project were in compliance or are expected

to comply with all requirements of applicable water quality requirements. Dischargers must submit a final annual inspection summary report to the Regional Water Board along with the final certification.

- B. The applicability of this Order to a specific project is immediately terminated upon receipt of a written acknowledgement of Termination or on the effective date of a different or new categorical waiver of WDRs, an individual waiver of WDRs, individual WDRs, general or watershed WDRs or a NPDES permit that covers or permits the specific Project.
- C. Notwithstanding any other provision of this Order, the burden of proof is on the Discharger to demonstrate that each finding required for coverage under this waiver can be made, and that each and every term, eligibility criterion, and condition has been met. Notwithstanding any other provision of this Order, no waiver coverage is valid unless each and every term, eligibility criterion, and condition is met.
- D. The Executive Officer may terminate the applicability of a categorical waiver to a specific project if the Executive Officer makes any of the following determinations:
 - 1. The Project does not comply with the eligibility criteria for the waiver;
 - 2. The Project is not in compliance with the applicable conditions of the waiver;
 - 3. The Project is reasonably likely to result or has resulted in a violation or exceedence of any water quality requirements;
 - 4. The Project has varied in whole or in any part from the approved Project in any way that could adversely affect water quality;
 - 5. Where conditions unique to the watershed or watershed segment (including, but not limited to, cumulative impacts, special hydrographic characteristics, Total Maximum Daily Load standards, the extent of timber harvest activities, intensity of ground disturbing activities, large acreage ownership holdings or management plans, rainfall, slopes, soil, effected domestic water supplies, an increased risk of flooding, or proximity to local, State, or National Parks) warrant further regulation.
 - 6. Where past land use activities unique to the watershed or watershed segment resulted in the discharge of human generated sediment in amounts which warrant further regulation.
 - 7. When requested by another state agency, a subdivision of the state (county) or a federal agency, and with concurrence by the Executive Officer.
- E. Upon receipt of a termination notice of a categorical waiver, the Discharger shall immediately cease all timber harvest activities that may result in discharges of waste to waters of the state, other than activities necessary to control erosion. Upon notice of termination, the Discharger must apply for coverage under general WDRs or file a Report of Waste Discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the state may commence only upon enrollment by the Executive

Officer under general or watershed wide WDRs, the adoption by the Regional Board of an individual waiver of WDRs or individual WDRs, or in accordance with Water Code section 13264(a).

- F. The applicability of this Order to a specific project is immediately terminated upon receipt of a Notice of Termination of applicability or on the effective date of a different or new categorical waiver of WDRs, an individual waiver of WDRs, individual WDRs, general or watershed WDRs or a NPDES permit that covers or permits the specific Project.
- G. The Discharger must terminate coverage under a categorical waiver for a completed Project by submitting to the Regional Board, forthwith upon completion of the Project, a final certification signed by the landowner certifying that: (1) the Project was conducted in conformance with the approved or accepted Project and with all applicable provisions of this Order, and (2) discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality requirements. Dischargers must submit a final annual inspection summary report to the Regional Water Board along with the final certification.
- E. Notwithstanding any other provision of this Order, the burden of proof is on the Discharger to demonstrate that each finding required for coverage under this waiver can be made, and that each and every term, eligibility criterion, and condition has been met. Notwithstanding any other provision of this Order, no waiver coverage is valid unless each and every term, eligibility criterion, and condition is met.
- F. Where waste discharge requirements have been issued by the Regional or State Water Resources Control Board and have not expired, a waiver of that discharge shall not be obtained without a decision by the Regional Board following a public hearing. Thus the Waiver cannot be used to modify any existing order of the Regional Board during the life of the permit.
- G. The provisions of this Order are severable; and, if any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
- H. Order No. R1-2009-xxxx shall expire five years from the adoption date.
- I. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under California Water Code sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.
- J. As provided by Water Code section 13350(a), any person may be liable for civil penalties if that person is in violation of a waiver condition, intentionally or negligently discharges waste, or causes waste to be deposited where it is

discharged, into the waters of the state and creates a condition of pollution or nuisance.

SECTION V: PROHIBITIONS

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.
3. The Discharger must not cause or threaten to cause pollution, contamination, or nuisance, as defined by Water Code section 13050.
4. The waiver does not waive WDRs for other regulatory programs, such as grading and land clearing for any type of construction of 1-acre or more. Such construction requires that the discharger obtain a construction stormwater permit.
5. The Discharger shall not adversely impact human health or the environment, or the beneficial uses of water set out in the Basin Plan.
6. The Discharger and Project shall comply with applicable local, state or federal laws and regulations.

Certification:

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on date, 2009.

Draft

Catherine Kuhlman
Executive Officer

Attachment A

DEFINITIONS

- A. "Controllable sediment discharge source" means 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.
- B. "Discharger" means the timberland owner and anyone working on behalf of the timberland owner in the conduct of timber harvest activities on non-federal lands.
- C. "Erosion Control Plan" means a plan designed and implemented to prevent and minimize the discharge of sediment from existing sites to waters of the state in violation of water quality requirements or other conditions of this Order and submitted with the Project seeking coverage under the Categorical Waiver E: Nonindustrial Timber Management Plans (NTMPs). The Erosion Control Plan (ECP) must be developed by a qualified professional, included in the approved Project, and incorporate Regional Water Board recommendations generated as part of the Project review and approval process that were designed to prevent and minimize discharge of sediment. The ECP must include but is not limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, site specific designs and/or management measures to prevent and minimize the discharge of sediment, and a time schedule for implementation of site specific designs and/or management measures.
- D. "Minimization" means the discharge or threatened discharge of sediment that cannot be prevented during design and implementation of the Project.
- E. "Monitoring" refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions. This includes, but is not limited to, assessment monitoring, trends monitoring, Basin Plan compliance monitoring, forensic monitoring, hillslope and instream effectiveness monitoring, and implementation monitoring.
- F. "Prevention" means the Project has been designed with the intent of preventing the discharge or threatened discharge of sediment waste through the use of all feasible and reasonable project design, timing and sediment control practices.
- G. "Project" means any Timber Harvest Plan, Nonindustrial Timber Management Plan, other discretionary permits issued by the California Department of Forestry and Fire Protection (CAL FIRE) to harvest timber, including all amendments thereto that propose a change in timber harvest activities that in

any way could adversely affect water quality, or any Notice of Exemption or Notice of Emergency Timber Operation accepted by CAL FIRE, or any other project, as defined by CEQA, that involves timber harvest activities provided that the project has lead agency compliance with CEQA.

- H. "Qualified professional" means a person with the appropriate training and/or licensing to prepare an Erosion Control Plan or other technical reports designed to prevent the discharge of waste into waters of the state and conduct site inspections, including but not limited to, Certified Erosion Control Specialists, Registered Professional Foresters, Registered Geologists, Certified Engineering Geologists, and Professional Civil Engineers.
- I. "Sediment Prevention Plan" means a plan designed and implemented to prevent and minimize the creation of new sites that discharge sediment to waters of the State and is submitted as part of a Project seeking coverage under Categorical Waiver F: Other Projects when applicable. The Sediment Prevention Plan (SPP) must be developed by a qualified professional, included in the approved Project, and incorporate Regional Water Board staff recommendations generated as part of the timber harvest review and approval process for each Project. The Sediment Prevention Plan (SPP) must include, but not be limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, and site-specific designs and/or management measures to prevent and minimize the discharge of sediment.
- J. "Timber Harvesting Activities" means commercial and non-commercial activities relating to forest management and timberland conversions. These activities include the cutting or removal or both of timber and other solid wood forest products, excluding Christmas trees, as well as, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; burned area rehabilitation; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory treemarking, surveying or roadflagging.
- K. "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. Wastes specifically regulated under this Order include: earthen materials including soil, silt, sand, clay, rock; organic materials such as slash, sawdust, or bark that enter or threaten to enter into waters of the state; heat; petroleum products; and nutrients. Not all wastes are covered by this waiver. Examples of wastes not specifically regulated or waived under this Order include: pesticides, hazardous materials, or human wastes.
- L. "Water Quality Requirements" means a water quality objective (narrative or numeric), prohibition, TMDL implementation plan, policy, or other requirement

contained in a Water Quality Control Plan (Basin Plan) adopted by the Regional Board and approved by the State Water Board, and all other applicable plans or policies adopted by the Regional Board or State Water Board, including, but not limited to, State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality Waters in California.

All other terms shall have the same definitions as prescribed by the California Forest Practice Act and Rules in effect as of June 4, 2009, and the Porter-Cologne Water Quality Control Act.

Draft

Attachment B

Erosion Control Plan

The Discharger must develop and submit an erosion control plan as follows for all Timber Harvest Plans, including non-industrial timber management plans, and other projects:

An Erosion Control Plan, as described below, must be developed and implemented for the entire logging area, including roads used to access or haul timber harvest activities on the subject Project that are owned by or under the control of the Discharger. The ECP must be designed to prevent and minimize the discharge or threatened discharge of sediment from existing Controllable Sediment Discharge Sources⁴ into waters of the state in violation of water quality requirements or other provisions of this Order.

The ECP may be included with the initial submittal of a project, in which case it can be reviewed concurrently with the project, or separately as part of the application for a Categorical Waiver.

Controllable sediment discharge sources include, but are not limited to, failing or failed watercourse crossings, road failures, road surfaces, landslides, unstable features discharging to or near watercourses, unstable watercourse banks, soil stockpiles, storage of waste, skid trails, landings, exposed harvest units, or any other location discharging or threatening to discharge waste or earthen materials. The ECP shall be amended and revised, when necessary, to meet this standard. No Project may conduct activities that can reasonably be expected to create new sediment discharge sources where none previously existed.

Contents of an ECP

- a. An Inventory and Treatment of Controllable Sediment Sources within the logging area

The inventory must identify controllable sediment discharge sources and inform the development of a time schedule for implementation of prevention and minimization management measures. The inventory must include an on-the-ground survey and site evaluations, and may be augmented by additional information sources such as aerial photographs or previously

⁴ CSDS are defined as 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. to the maximum extent practicable, may feasibly and reasonably, respond to prevention and minimization management measures.

prepared reports. Any method or model used to develop the inventory must be briefly described and must be reasonably expected to detect sediment discharge sources and to effectively prevent and minimize sediment discharge. The inventory must include:

- i. A brief description of the method(s) used to conduct the inventory. This description provides the reviewer with an understanding of the thoroughness of the survey method and the likelihood that CSDSs have been identified. For example, the description identifies any aerial photographs used, and whether the Discharger surveyed all watercourses and skid trails,
- ii. A description of each of each site, including sufficient information to provide the reviewer with an understanding of current conditions and why the site meets the definition of a CSDS,
- iii. A topographic map, at a scale of 1:12000 or greater (e.g. 1:6000) with no greater than 80' contours, showing the logging area and the location of all controllable sediment discharge sources included in the inventory,
- iv. An estimate of the potential deliverable sediment volume for each inventoried site. The potential deliverable sediment volume represents an estimate of the maximum volume of sediment that could discharge to waters of the state in the event of complete failure of a site,
- v. A narrative description of the site-specific prevention and minimization management measure(s) prescribed for each controllable sediment discharge source identified in the inventory. Prevention and minimization management measures must be reasonably expected to effectively prevent and minimize specific sediment discharge sources in the logging area. The description must provide sufficient design and construction specifications, including but not limited to diagrams, minimum rock size, or performance standards as needed, to allow on site personnel to implement prevention and minimization measures as intended,
- vi. Priority for implementation of prevention and minimization measures. The priority must be used to develop the time schedule for implementation and must be based on the potential impacts to the beneficial uses of water. The priority must consider at a minimum the estimate of the deliverable volume of sediment, the imminence of failure, and the sensitivity of beneficial uses of water in receiving streams. In general, the highest priority is assigned to sites with large sediment discharge sources that show an imminent risk of failure and that will discharge to waters that support domestic water supplies or fish. Priority may be indicated as low, medium, or high.

- vii. A time schedule for implementation of prevention and minimization management measures contained in the ECP that provides for timely implementation to prevent and minimize sediment discharge from sites in the order of priority. For THPs, implementation must be during the time an individual THP is active, or during the initial NTO for an NTMP, unless an alternative time schedule is agreed to in writing by the Executive Officer. The schedule may specify a time range for implementation, for example the plan may state that a site shall be completed during the first two years of operations on the plan, as long as the schedule includes a final completion date.
- b. Inspection Plan and Reporting Requirements
For each Project, Dischargers must develop and implement an Inspection Plan for evaluating the implementation and effectiveness of the management measures in the Erosion Control Plan, to determine if any new controllable sediment discharge sources have developed within the Project area, and to ensure that all drainage facilities and erosion control structures are functioning properly in order to prevent sediment discharge to waters of the state.

The Inspection Plan must include a narrative discussion of the program to inspect and maintain all identified management measures designed to prevent and minimize sediment discharge throughout the duration of the Project. A site map that depicts the inspection locations to be visited before and after the winter period must be included in the Inspection Plan. Inspections must include, at a minimum, logging area roads that could discharge sediment, sites and locations addressed in the sediment prevention plan, and controllable sediment discharge sources contained in the ECP.

Each CSDS site must be inspected during each required inspection. Additionally, inspectors should strive to inspect BMPs and/or management measures implementation sites as well as the entire Project area to determine if any new CSDS sites developed. Inspectors must note the conditions of CSDS sites and any failures or ineffectiveness of BMPs and/or management measures.

Inspections conducted prior to the winter period must be designed to assure that management measures are properly installed and maintained. Post-winter period inspections must be designed to assure that the management measures have functioned adequately and to determine whether any new controllable sediment discharge sources have developed. Management measures must be evaluated for adequacy and proper implementation and whether additional management measures are required in accordance with the terms of this Order.

Qualified professionals must conduct all specified inspections of the Project site to identify areas causing or contributing to a violation of applicable water quality requirements or other provisions of these Categorical Waivers. The name(s) and contact number(s) of the assigned inspection personnel must be listed in the Inspection Plan. The following inspection requirements begin once the startup of timber harvest activities begin within Project areas:

- i. Inspections must be conducted as follows:
 - By November 15 to assure Project areas are secure for the winter; and
 - After April 1 and before June 15 to assess the effectiveness of management measures designed to address controllable sediment discharges and to determine if any new controllable sediment discharges sources have developed.

Projects for which Timber Harvest Activities have not yet Commenced

No inspections are required.

Projects for which Timber Harvest Activities have Commenced

- For THPs and other non-NTMP projects, inspections must be conducted each year according to the schedule specified above until the Project has been completed and the Discharger has submitted a Notice of Termination;
 - For NTMPs, inspections must be conducted each year according the schedule specified above until a final completion report for each NTO has been signed by CAL FIRE.
- ii. If any new controllable sediment discharge sources are identified during inspections, prevention and minimization measures must be implemented as soon as is feasible. New controllable sediment discharge sources shall be evaluated and addressed in accordance with the provisions described above, and included in a revised ECP. The revised ECP must be submitted to Regional Water Board staff with the annual summary inspection report.
 - iii. Equipment, materials, and workers must be available for rapid response to failures and emergencies, and implement, as feasible, emergency management measures depending upon field conditions and worker safety for access.

c. Reporting Requirements

Discharger must submit a inspection summary report to the Executive Officer by June 30th for each year of coverage under these Categorical Waivers and upon termination of coverage. The inspection summary report must include the following information, at a minimum:

- the date of each inspection,
- the inspector's name,
- the location of each inspection,
- the title and name of the person submitting the summary report,
- a brief narrative description of observed conditions,
- a description of any new controllable sediment discharge sources identified during inspections or throughout the course of routine timber harvest activities,
- a description of any corrective action taken to prevent and minimize sediment discharge as a result of observations made during the inspections, as well as the date the corrective action was taken,
- a description of prevention and minimization measures contained in the ECP implemented up to the date of submission of the report, the date those measures were implemented, and an evaluation of the effectiveness of those measures,
- a description of where management measures have been ineffective and when the Discharger will implement repairs or design changes to correct management measure failures.

A final inspection summary report shall be submitted with the final Notice of Termination.