

California Regional Water Quality Control Board
North Coast Region

Order No. R1-2010-0029

Waiver of Waste Discharge Requirements

For

Nonpoint Source Discharges Related to
Certain Federal Land Management Activities
on National Forest System Lands

In The

North Coast Region

Comments Received

United States Forest Service, Region 5

Felice Pace for the Klamath Forest Alliance and Environmental Protection
Information Center

Felice Pace, additional comments received after the comment period

Karuk Tribe

Quartz Valley Indian Reservation

Forest Issues Group

California Cattlemen's Association, California Farm Bureau Federation,
and California Forestry Association

California Department of Forestry and Fire Protection



United States
Department of
Agriculture

Forest
Service

Pacific
Southwest
Region

Regional Office, R5
1323 Club Drive
Vallejo, CA 94592
(707) 562-8737 Voice
(707) 562-9240 Text (TDD)

File Code: 2530-3

Date: May 14, 2010

Robert Klamt
Chief, Timber Harvest and Nonpoint Source Division
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard
Suite A
Santa Rosa, CA 95403

Dear Mr. Klamt:

The North Coast Regional Water Quality Control Board (Regional Board) waiver of Waste Discharge Requirements for activities on national forests (Order Number R1-2010-0029), as proposed on April 14, 2010, will provide a means of regulatory compliance that is consistent with our existing guidance under the Northwest Forest Plan. The waiver will cover almost all activities on national forests, unlike previous waivers that were limited to timber harvesting and vegetation management. I support this expansion of waiver coverage, which is in keeping with our current efforts to develop a statewide regulatory action with the State Water Resources Control Board.

The waiver provides for the application of Best Management Practices to protect beneficial uses from potentially adverse effects of new activities, and provides an incentive-based approach to restoration of legacy threats to water quality. The waiver also provides for TMDL compliance in 303(d) listed water bodies that do not have implementation plans developed.

The monitoring program outlined in the waiver is a useful approach for assessing the effectiveness of our management practices, as well as current in-channel conditions and trends at the watershed scale. I support this monitoring approach, but would like to ensure that the scope of this program does not exceed our available resources. I remain confident that our staffs can work together to reach consensus on the number and location of monitoring sites.

I also encourage further discussion between our staffs regarding the means by which waiver conditions will be included in National Environmental Policy Act analyses, contracts, agreements, and permits, and the responsibilities of the USDA Forest Service in communicating waiver conditions to contractors and grazing permittees. I understand that my staff has made some initial proposals to you on these issues, and have confidence that any remaining differences can be resolved to our mutual satisfaction.

As stated in my letter of March 23, 2010, I support the efforts of the Regional Board to develop this waiver and encourage its adoption. I appreciate the hard work and cooperation of you and



your staff, and remain committed to work with you, your board members, the State Water Resources Control Board, and colleagues from other regional boards to improve water-quality protection on NFS lands.

Sincerely,

/s/ Debra L. Whitman (for)
RANDY MOORE
Regional Forester

cc: Carolyn A Cook
Alan D Olson
Barry Hill

**Environmental Protection Information Center
Klamath Forest Alliance
28 Maple Road
Klamath, CA 95548**

May 17, 2010

Ms. Catherine Kuhlman, EO
and Members of the Board
North Coast Water Quality Control Board
5550 Skylane Blvd. Santa Rosa, CA. 95403

SUBJECT: Comment on Proposed Order No. R1-2010-0029 - Waiver of Waste Discharge Requirements For Nonpoint Source Discharges Related to Certain Federal Land Management Activities on U.S. Forest Service Lands In the North Coast Region

Dear Ms. Kuhlman and Board Members:

The proposed waiver is being considered as a potential model for other regions and will also be used to inform the current state-wide process. That state-wide process has already resulted in the submission of input indicating major inadequacies in the BMPs. In particular BMPs for grazing management, off-road vehicle management, road use and maintenance and fire suppression activities have been found to be consistently inadequate and/or inadequately implemented. The input on BMP inadequacy that has been submitted in the state process is hereby incorporated into these comments by reference and should be carefully considered in crafting the final draft to be considered by the Board on June 10th.

The state-wide process should result in a major revision to the Forest Service's Water Quality Management Plan for national forests in California. Anticipating that major revision, we strongly recommend that the Board adopt an interim or one year waiver at this time along with direction to staff to prepare a final waiver once an updated state-wide national forest WQM Plan is adopted.

In general, the current proposed waiver is a big improvement over the previous draft. The NCWQCB and FS staffs have been responsive to input received and have expanded the waiver to cover all non-point sources/activities. The monitoring and reporting requirements have also been strengthened. EPIC and KFA appreciate this responsiveness and all the good work that has gone into the current draft. However, we believe that the current draft is not yet adequate to protect water quality on national forest lands. The most glaring deficiencies are:

1. The failure of the waiver to adequately address ground disturbing activities on steep, unstable, landslide-prone landforms/terrains,
2. The failure of the proposed waiver to clearly require that all roads must be inspected at the end of the wet season and to require that sediment delivery sites identified as a result of those and post-storm inspections are remediated in a timely manner.
3. Reliance on watershed restoration without requiring that FS units actually make the budget requests and secure the funds necessary to accomplish the restoration. As currently written, all the FS needs to do is "identify" and "prioritize" the needs.

There now follows our specific comments on the proposed waiver as published on the NCWQCB web site. The comments below are keyed to sections and paragraphs in the proposed waiver. The section from the published draft is given first in italics followed by our bulleted comments in bold.

I. Comments on Proposed Waiver Findings:

27. This Waiver contains three primary substantive components in addition to monitoring and reporting requirements. They are: 1) the maintenance and restoration of riparian reserves pursuant to the ACS; 2) the timely implementation of watershed restoration plans that require inventories, prioritization and remediation of preexisting sediment sources; and 3) for site-specific activities, the implementation of on-the-ground prescriptions to meet the BMP goals identified for the activities covered by this Waiver.

- ◆ **The FS has proposed abolishing the ACS. The NCWQCB should obtain a commitment from the FS that they will continue to implement the ACS during the life of the waiver. Barring such a commitment, the NCWQCB can not rely on the ACS to meet applicable water quality standards.**

28. As described in finding 9, the ACS in the NWFP applies riparian reserves to all ephemeral, intermittent, and perennial streams and geologically unstable areas. Riparian reserves provide shade to meet the Basin Plan water temperature objective; buffer surface waters from discharges of waste associated with upslope activities by trapping sediment; and protect the natural diversity of vegetation that enhances resiliency of the riparian system and the morphology of the stream system. This Waiver requires the USFS to protect and maintain riparian reserves.

- ◆ **As interpreted by the FS in this region, the ACS excludes from riparian reserves all but the toe zones of so-called “inactive landslides” including earthflows. But these earthflows are THE major source of massive episodic sediment delivery to streams. Therefore, the waiver must either secure a commitment from the FS to protect all portions of earthflows as riparian reserves or specify specific additional actions needed to prevent management-induced mass failure of earthflow-type landslides including a prohibition on road construction/reconstruction and requirements for retaining vegetation (root matrix stability).**

29. As described in finding 14(c), the USFS actively addresses legacy nonpoint sediment sources, or pre-existing threats to water quality. Active and potential sediment delivery sites are inventoried, prioritized, and scheduled for remediation. This Waiver requires the USFS to make those inventories available to Regional Water Board staff for review and allow inspection of sites as needed to assist in prioritization. (See Waiver conditions 2-4.) Each Forest will provide on an annual basis a list of its watersheds and prioritization for restoration, and detail the progress made in each watershed. Regional Water Board staff will confer with the USFS on legacy site inventories and remediation projects to verify reasonable progress. Successful implementation of watershed restoration plans is required for sediment and temperature TMDL compliance. If the USFS does not have a Watershed

Restoration Plan or an inventory and prioritization of legacy nonpoint sites for the watershed where a site-specific activity to be covered under this Waiver is proposed, USFS must propose treatments of existing legacy nonpoint sources within the project area as part of the proposed project.

- ◆ **This is a good provision as far as it goes. However, experience on the ground shows that while the FS is diligent in identifying restoration and watershed remediation needs they are far less successful in securing funding and actually accomplishing even the prioritized restoration and remediation tasks. Restoration can therefore only be relied upon for waiver compliance to the extent that funding for the identified projects and priorities is forthcoming. To address this inadequacy, this provision should be revised so that the FS units completing the inventory and prioritization are required to demonstrate that the restoration activities will actually take place because the needed funding has been secured. Specifically, FS units should be required to complete budget requests for the priority projects identified in collaboration with the NCWQCB and other stakeholders and to have funding commitments before more ground disturbance is allowed. To this end the final sentence should be revised to read as follows:**

If the USFS does not have a Watershed Restoration Plan or an inventory and prioritization of legacy nonpoint sites, or if the FS has such a Plan but has not obtained a funding commitment to remediate/restore sites prioritized in such a Plan for the watershed where a site-specific activity to be covered under this Waiver is proposed, the USFS must propose treatments of existing legacy nonpoint sources within the project area as part of the proposed project.

31. This Waiver applies to two categories of activities, which are grouped according to level of potential impact to water quality. Activities that have a low potential impact to water quality are eligible for Category A. Category A lists those activities found to meet this classification. Category B applies to activities with a moderate potential impact to water quality and requires the USFS provide more information to the Regional Water Board, who will then conduct a more detailed review. In Category B, characteristics of an activity, such as intensity and proximity to surface waters, and the sensitivity of the area, will determine which BMPs and on-the-ground prescriptions are needed to ensure the activity will have a less-than-significant impact on water quality.

- ◆ **This is also reasonable as far as it goes. However, there is another dimension that determines potential for an activity to violate a water quality standard or TMDL implementation requirement, i.e. the sensitivity of the land form on which the activity takes place. The same activities on steep, unstable and potentially unstable terrains, for example, need more intense review than activities on stable gentle slopes. In this regard see also our comments on item 32 below.**

32. It is appropriate to regulate discharges from nonpoint source activities as described in finding 4 under a general waiver rather than individual discharge requirements, because this Waiver addresses the same or similar discharges of waste from the same or similar operations and proposes the same or similar treatment methods and management practices. By regulating these discharges and activities under a general waiver, it simplifies and streamlines the regulatory process and allows Regional Water Board staff to focus its limited resources on working with the USFS

to protect water quality. It is not an efficient use of Regional Water Board staff time to process WDRs for each and every USFS activity when many of the proposed activities have a only potentially low or moderate impact on water quality and an effective Waiver program can be established that can rely, in part, on the USFS administration of its existing programs that are in place to protect water quality. This Waiver contains monitoring and reporting requirements that allow the Regional Water Board to assess the Waiver's effectiveness at protecting water quality. The Regional Water Board will reevaluate the Waiver no later than five years, when it must be renewed, and earlier if appropriate. At that time the Regional Water Board can make any necessary adjustments.

- ◆ **Certain high risk land management activities on the national forests have been shown to regularly result in significant negative impacts to water quality. These activities are not appropriate for enrollment under a general waiver. Examples include but are not limited to:**
 - **Road construction/reconstruction on earthflow and other unstable and potentially unstable terrains/land forms.**
 - **Major fire suppression activities which involve thousands of people camping and working in the forest, many miles of fireline constructions, many and large backfires and burn-outs.**
 - **Grazing allotments which have a history of non-compliance with management requirements.**
 - **Roads which receive administrative and other use but which do not receive annual inspection to determine if maintenance work is needed to correct drainage problems.**
 - **Vegetation removal within riparian reserves.**

These and other activities with high potential for violation of TMDL requirements and water quality standards are not appropriate for enrollment under a general waiver. Therefore, the FS should be required to obtain WDRs for these and other activities which experience on the ground indicate have a high potential to significantly degrade water quality.

33. The MAA, which was described in finding 16, requires implementation and effectiveness monitoring of the management practices included in the USFS BMP Manual. The USFS conducts a BMP Evaluation Program (BMPEP) to meet this requirement. The BMPEP provides annual on-site assessments of a randomly selected subset of all BMPs that were implemented as part of activities conducted within a Forest, assessing both proper implementation and effectiveness. Implementation of effective BMPs is necessary to reach water quality goals and objectives. BMPEP results from 2003-2007 show that 86% of BMPs were rated as implemented and that 89% of those were rated effective.

- ◆ **As you note, the BMP monitoring program demonstrates good (B+) success in general. However, certain activities show consistently and significantly lower rates of implementation and effectiveness than the general rates cited. The waiver should cite the implementation and effectiveness rates BY ACTIVITY and not just in general. Those activities with lower rates of implementation and effectiveness should be prioritized for further investigation. For example, grazing BMPs are regularly poorly implemented and regularly not effective when implemented. For**

this reason we believe a separate and specific compliance monitoring program for grazing is needed.

37. The Klamath National Forest developed a monitoring plan to address TMDL implementation in the portions of the Salmon, Scott, and Klamath rivers within the Klamath National Forest (Klamath National Forest Sediment and Temperature Monitoring Plan and Quality Assurance Plan). Note: The intent is that the monitoring plan will meet the needs of this Waiver and will be incorporated by reference into this Waiver, if it is completed and accepted by the Regional Water Board staff prior to adoption of this Waiver.

- ◆ **It is not appropriate to rely on a document that is not being developed by NCWQCB staff, is not now available for review and which will not be subject to Board or public review prior to its adoption. To remedy this deficiency one of the following options should be chosen:**
 - **The provision should be dropped**
 - **The provisions should be rewritten to provide for review and adoption of the FS water quality monitoring plan by the Board with full opportunity for public review.**
 - **Approval of the waiver should be delayed pending completion of the monitoring plan so that it can be reviewed by the Board and public as an attachment to the proposed waiver.**

38. USFS emergency activities may include wildfire suppression and Burned Area Emergency Rehabilitation (BAER). The USFS has procedures to address fire suppression activities and minimize impacts of the suppression activities on water quality. Each Forest also has conditions and processes in its LRMP to address fire suppression activities, including guidance for fueling equipment, use of fire retardants, and other components of fire suppression.

- ◆ **Because “procedures to address fire suppression activities and minimize impacts of the suppression activities on water quality” have often been poorly implemented resulting in massive and unnecessary water quality impacts, something more is clearly needed to address suppression impacts associated with large fires. One idea would be to require training in those procedures for all fire managers and local decision makers. Since these are also emergencies, however, we also recommend that a requirement be added for a post-fire collaborative review of the suppression impacts by the NCWQCB, USFS local managers and other interested parties. This sort of review will hopefully motivate local managers to pay more attention to using the BMPs to minimize suppression impacts during future fire suppression efforts.**

41. This Waiver covers discharges from emergency actions defined in California Code of Regulations, title 14, section 15269. The Waiver requires the USFS to post emergency incidents on its website, and to maintain records for Regional Water Board staff review, as appropriate.

- ◆ **We recommend requiring not only that these reports be maintained but also that they be: 1. completed within 2 months of the end of the emergency, and 2. submitted to the NCWQCB rather than just maintained in a FS file.**

42. State Water Board Resolution No. 68-16 ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires that whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality must be maintained, until it has been demonstrated that any change will be consistent with maximum benefit to the people of the state, and will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies. It further requires that dischargers meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state will be maintained. This Waiver is consistent with Resolution No. 68-16 because overall it will result in a net benefit to water quality by setting forth conditions that implement riparian and shade protections and enhancements, address sediment delivery sites, and implement BMPs and on-the-ground prescriptions for new activities. The activities permitted under this Waiver have been determined to have a low potential impact to water quality when conducted pursuant to the terms of the Waiver, resulting in compliance with applicable water quality control plans, including applicable water quality objectives. The implementation of BMPs and on-the-ground prescriptions identified for each activity, and the monitoring of their effectiveness, will result in the best practicable treatment or control of the discharge and will assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state is maintained.

- ◆ **High quality waters on the National Forests are not being maintained. The Aquatic Conservation Strategy calls for RECOVERY of the key watersheds. But since adoption of the ACS key watersheds within the North Coast Region have not recovered; some (Elk Creek Watershed on the KNF is an example) have not only not recovered they have been further degraded as a result of management activities. In part this is a result of ill conceived management – including fire suppression. But it is also a consequence of the fact that funding to implement aspects of the ACS (e.g. road decommissioning) has not been forthcoming. This calls into question whether the finding above is credible. The NCWQCB should require the FS to assess baseline conditions in key watersheds and to submit an assessment of key watershed condition and trend once every five years.**

II. Comments on Proposed Waiver Orders:

1. USFS shall manage and maintain designated riparian zones (as defined in finding 9, see footnote below 3) to ensure retention of adequate vegetative cover that results in natural shade conditions within 300 feet slope distance on each side of fish-bearing streams, 150 feet slope distance on each side of perennial streams, and 100 feet slope distance on each side of ephemeral / intermittent streams, or the site potential tree height distance on each side of the stream,

whichever is greatest (per NWFP ASC Strategy Objective No. 4). Timely implementation is necessary for sediment and temperature TMDL compliance. Natural shade conditions are defined as the shade on a watercourse that results from the site potential naturally occurring vegetative community and topographic configuration.

- ◆ **Unstable and potentially unstable terrains and landforms are not addressed. This should be fixed. Landsliding is THE major source of episodic, nuisance sediment delivery to NF streams. The FS should be required to protect ALL unstable and potentially unstable lands as riparian reserves or – if they are unwilling to do that - to obtain WDRs for ground disturbing activities on specific terrain and land form types including earthflows and debris basins.**

2. The USFS shall actively address legacy or pre-existing discharges and/or threats to water quality. Sediment delivery sites must be inventoried, prioritized, and scheduled for remediation. There is an expectation that each Forest will make reasonable progress towards completing inventories and remediating legacy nonpoint sites. Timely implementation is necessary....

- ◆ **For this provision to work those “inventoried, prioritized and scheduled” sites must also actually be remediated. This is where the FS has failed in the past. Specifically, new degrading activities have been undertaken with the expectation of remediation only the remediation has never taken place. Watershed Assessments are notorious in this regard. As suggested above, specific requirements for the FS to demonstrate that funding for remediation has been requested and secured BEFORE additional ground disturbing activities are approved should be added here.**

8. The USFS shall include within the environmental document prepared pursuant to NEPA, contracts, agreements, and other instruments used to direct the activities of contractors, USFS personnel, volunteers, or any other personnel operating under the USFS control, the specific on-the-ground prescriptions that are designed to meet the USFS BMPs. The intent is to provide clarity and transparency in how the BMPs will be met and to facilitate the monitoring of BMP implementation (per section B, part 1, Monitoring and Reporting Requirements).

- ◆ **The FS regularly only includes a list of BMPs in environmental documents. But the courts have found that they need to show where and how BMPs will be implemented and also include an analysis showing that there is a reasonable expectation that the BMPs will be effective. Therefore we recommend that this excellent requirement be firmed up even more by specifically mentioning that BMPs must be tied to actual locations where they will be used and that the environmental document include an analysis indicating that the BMPs as applied will be effective.**

10. The USFS is responsible for Waiver compliance, regardless of whether the activities covered by this Waiver are conducted by its contract operators. In addition, contract operators must comply with applicable conditions of this Waiver and site-specific on-the-ground prescriptions identified in the USFS contract.

Violations of this Waiver are subject to enforcement to the extent allowed by law.

- ◆ **We recommend including here a requirement that the FS notify the NCWQCB when a contractor has violated contract responsibilities resulting in unanticipated, unassessed impacts to water quality.**

12. USFS shall comply with the Scott and Salmon River TMDL implementation MOUs, as described in finding 26.

- ◆ **We strongly recommend that these MOUs be included in the waiver as appendices.**

13. Compliance with all of the conditions of this Waiver, including legacy site inventories and remediation, retention of natural shade within designated riparian zones, and application of on-the-ground prescriptions that meet USFS BMPs for new activities identified in finding 4 performed on USFS land constitutes compliance with sediment and temperature TMDL implementation.

- ◆ **We recommend rewriting this order to read as follows:**

*13. Compliance with all of the conditions of this Waiver, including legacy site inventories and remediation, retention of natural shade within designated riparian zones, **protection of unstable and potentially unstable terrains and land forms as riparian reserves** and application of on-the-ground prescriptions that meet USFS BMPs for new activities identified in finding 4 performed on USFS land constitutes compliance with sediment and temperature TMDL implementation.*

14. Regional Water Board staff and staff from each Forest covered by this Waiver shall meet annually to discuss and rectify any issue with Waiver compliance, TMDL implementation, or any other issues associated with this Waiver.

- ◆ **We recommend including “other interested parties” in this provision so that those parties can participate in the annual review meetings with the FS and NCWQCB staff.**

16. The USFS shall notify the Regional Water Board in writing at least 90 days prior to the proposed application of pesticides, unless Regional Water Board staff agrees in writing to a lesser notice. The notification shall include the type of pesticide, method and area of application, projected date of application, and measures that will be employed to assure compliance with the Basin Plan.

- ◆ **We recommend deleting the phrase “unless Regional Water Board staff agrees in writing to a lesser notice” from this order.**

III. Other Waiver provisions:

12. The Regional Water Board will consider nutrient discharges associated with grazing activities as the allotments come up for renewal according to the schedule in Attachment B. Grazing operations need not apply for Waiver coverage until the allotment renewal. The USFS may involve Regional Water

Board staff in early review of an allotment permit (prior to the scheduled review of a 10-year allotment permit in Attachment B), and may request that the Regional Water Board enroll such allotment in the Waiver ahead of the schedule in Attachment B.

- ◆ **Since a nutrient TMDL implementation plan is now in effect, grazing allotments must comply now; this can not legally be deferred. As noted above, we strongly recommend a specific allotment monitoring process to be implemented collaboratively by the FS, NCWQCB, the operators holding allotments and other interested parties. One objective of this monitoring should be to determine the needed frequency of active grazing management (including herding) needed to prevent degradation of riparian areas and water quality. The NCWQCB should then require that these herding requirements be specifically included not only in Grazing Allotment Management Plans but also in the Annual Operating Plans which must be completed for each allotment each year**

16. Minimize new road construction in watersheds designated by USFS as “Key Watersheds” and in high risk watersheds.

- ◆ **This is a big loophole which should be closed. The FS has funds to maintain AT MOST 25% of national forest roads. Unmaintained roads impact water quality sooner or later. Therefore, because they can’t maintain the roads they already have, new construction as well as RECONSTRUCTION in key watersheds, high risk watersheds and watersheds over threshold for cumulative watershed impacts should be prohibited under this waiver, i.e the FS should be required to obtain WDRs if they want to engage in construction and reconstruction in such areas which, by definition, pose unacceptable risks and/or violate non-degradation provisions.**

The Klamath National Forest sediment and water temperature monitoring plan, Klamath National Forest Sediment and Temperature Monitoring Plan and Quality Assurance Plan, will be used to address the monitoring needs for this Waiver, as appropriate, and TMDLs for the portions of the Klamath National Forest in the Scott, Shasta, Salmon, and Klamath watersheds.

- ◆ **Any and all plans relied upon by this waiver ought to be attached to it as appendices.**

b. National forests will conduct road patrols to the extent allowed by weather, safety, and road conditions during and after major storms to detect and correct road drainage problems that could affect water quality.

- ◆ **We recommend that this provision be rewritten as follows:**

*b. National forests will conduct road patrols **on all roads** to the extent allowed by weather, safety, and road conditions during and after major storms **and at the end of the wet season** to detect and correct road drainage problems that could affect water quality. **The FS will submit reports to the NCWQCB when such patrols are conducted. The reports will locate sites needing correction, describe resulting impacts to water quality and provide a schedule for completion of needed corrections.***

Summary and Conclusion:

The existing waiver has not provided for the recovery of streams on federal lands managed by the Forest Service. The new waiver should correct this failure in order to faithfully meet your mandate, the desires of the citizens and key provisions of the Basin Plan – including water quality standards. While national forest streams are generally in better condition than other Northcoast streams, this is NOT a reason to allow further degradation. In fact, the key refugial watersheds on national forest lands are – according to the best available science – the most important watersheds to protect from degradation given the more profound degradation elsewhere. But those key watersheds have not recovered; at best they have held steady. This means that we must do more to reverse the progressive degradation of national forest streams and the ongoing violation of applicable water quality standards.

While the new draft waiver is an improvement, it is not sufficient to restore water quality on North Coast national forests. We request that you carefully consider the recommendations we have made and that you incorporate them where appropriate. If you choose not to follow those recommendations we'd like to know why.

Felice Pace (unofelice@gmail.com) is the primary contact for EPIC and KFA on issues related to waiver development. However, please also keep the following EPIC and KFA staff members informed concerning further waiver developments and waiver implementation issues:

"Petey Brucker" <ptb92day@gmail.com>

"Kayla Baker" <klam_watch@yahoo.com>

"Scott Greacen" scott@wildcalifornia.org

Thank you for your service to the People and the Public Trust.

Sincerely,

Felice Pace for E.P.I.C. and KFA

Received via email on June 1, 2010

From: Felice Pace <unofelice@gmail.com>
To: Cat Kuhlman <ckuhlman@waterboards.ca.gov>, Robert Klamt <RKlamt@waterboa...
CC: ken Fetcho <kfetcho@yuroktribe.nsn.us>, <rob.vankirk@humboldt.edu>, Alan...
Date: 6/1/2010 2:14 PM
Subject: Addendum #1: comments on proposed national forest waiver

Environmental Protection Information Center

*Klamath** Forest Alliance*

*28 Maple Road***

*Klamath**, CA 95548** *

* *

June 1, 2010

Ms. Catherine Kuhlman, EO

and Members of the Board

North Coast Water Quality Control Board

5550 Skylane Blvd. Santa Rosa, CA. 95403

Attention Robert Klamt: RKlamt@waterboards.ca.gov

SUBJECT: *Addendum #1: Comment on Proposed Order No. R1-2010-0029 -
Waiver of Waste Discharge Requirements For Nonpoint Source Discharges
Related to Certain Federal Land Management Activities on U.S. Forest Service
Lands In the North Coast Region*

Dear Ms. Kuhlman and Board Members:

We have reviewed the monitoring report which Regional FS Hydrologist Barry Hill recently provided in response to our previous comments on the proposed waiver. We have concerns about the adequacy of the monitoring described in that report to reach conclusions about compliance with applicable TMDLs, water quality standards and other Basin Plan provisions. Our concerns are discussed below. These comments are an addendum to previous comments on the proposed waiver which we have submitted.

To refresh memories, Mr. Hill sent the 2008 "Long Term Range Monitoring" report in response to our comments on the proposed FS waiver wherein we asserted that - in order to determine compliance with applicable provisions

of the Basin Plan - monitoring and reporting of riparian condition and water quality in and adjacent to (below) grazing allotments should be required as a condition of the waiver. I also noted that the riparian monitoring could be done inexpensively using time series aerial photographs.

The monitoring reported on in the attached report is vegetation monitoring designed to assess the condition of meadow vegetation. The monitoring is not designed to assess riparian condition and – based on many statements in the report - we do not believe it is adequate for Basin Plan compliance determination/monitoring. For example, there is no measurement of riparian canopy closure or bank condition (presence or absence and extent of trampled banks). Furthermore, forested riparian areas immediately adjacent to meadow systems are regularly and heavily used by grazing animals but are not monitored by the Forest Service.

Here is one of many quotes from the report which makes the point:

* In selecting key areas in riparian types, the transects are generally not located in the hydric (wetter) types that are more likely to be at good ecological condition, but rather in the mesic sites that are likely in a lower ecological condition. We are looking for sites that are sensitive to changes in our management practices. These sites are intended to be representative of the meadow type (wet, moist, or dry) where they are located.

*

While it can't be used to monitor Basin Plan compliance, the results of the meadow monitoring do raise concerns. 15% of the vegetation plots in meadows were rated as "low" functioning. Of even more concern is that 42% of the greenline/riparian transects were rated as exhibiting "lower ecological condition." This may also indicate degraded riparian condition, trampled banks, etc. * *

* *

*This monitoring report and the BMP monitoring reports both strongly indicate that substantial changes in FS grazing management are needed in order to comply with the Basin Plan/Clean Water Act. Yet we see no evidence that the FS recognizes this problem and little in the proposed waiver that will allow NCWQCB staff to assess whether grazing allotments are being managed to comply with the Clean Water Act. *

* *

Based on the above we request that NCWQCB staff:

.. *Work with the FS to develop a plan for improving the water quality performance of grazing allotments as measured by riparian condition and trend.*

.. *Include in the new waiver monitoring "triggers" – that is, define those monitoring results which will require specific effort to change practices in order to improve compliance. *

.. *Recommend to the state-wide FS CWA compliance process that they consider new/improved management practices and BMPs for national forest

grazing statewide.*

“ *Include within the final NF waiver specific requirements for riparian and water quality condition and trend monitoring within all or a randomly selected sample of grazing allotments. We recommend a monitoring frequency of 3-5 years. Please require that all monitoring reports be submitted to the NCWQCB.*

“ *Include in the final FS waiver a requirement that the FS is prohibited from allowing cattle onto allotments when conditions are such that damage to riparian areas, water quality and wet meadows is likely to occur. *

Throughout this process we have strongly and repeatedly recommend that a requirement for specific regular monitoring of riparian condition and trend within grazing allotments be included in the waiver. Both sediment and temperature impairments are ubiquitous within Northern California National Forest watersheds. As numerous NCWQCB TMDL documents attest, maintenance of riparian shade and riparian bank stability is required to cure these impairments. If we don't monitor riparian condition we won't know whether we are moving toward compliance or toward more degradation.

If these recommended changes in the proposed waiver can not be affected before the meeting on which it is scheduled for approval, we recommend continuing the item. The NCWQCB needs to take the time to get this right so that NF watersheds come into full compliance with the Basin Plan/CWA.

Thank you for your service to the People and the Public Trust.

Sincerely,

Via E-Mail

Felice Pace for EPIC and KFA

Felice Pace
Klamath, CA 95548
707-482-0354
707-954-6588 (cell)

"We are all made half garbage and half marble"

- Eduardo Galeano on Democracy Now!, May 28, 2009.

Department of Natural Resources

39051 Highway 96
Post Office Box 282
Orleans, CA 95556
Phone: (530) 627-3446
Fax: (530) 627-3448

Karuk Tribe



Administrative Office

Phone: (530) 493-1600 • Fax: (530) 493-5322
64236 Second Avenue • Post Office Box 1016 • Happy Camp, CA 96039

Orleans Medical Clinic

39051 Highway 96
Post Office Box 282
Orleans, CA 95556
Phone: (530) 627-3452
Fax: (530) 627-3445

May 17, 2010

Robert Klamt
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Suite A
Santa Rosa, CA 95403
RKlamt@waterboards.ca.gov

RE: Comments on Proposed Waiver of Waster Discharge Requirements on U.S. Forest Service Lands in North Coast Region

Dear Mr. Klamt,

The Karuk Tribe Department of Natural Resources (DNR) has reviewed the waiver of waste discharge requirements (waiver) for nonpoint source related discharges on U.S. Forest Service (USFS) lands. The language in the waiver is rather vague. Rather than commenting on specifics within the waiver, we would like to see language that addresses the need for the USFS to coordinate its management actions with local Tribes. Particularly, there are laws that require USFS to coordinate its planning efforts with Tribes.

The Karuk Tribe has an active DNR that works on issues such as fire, fuels reduction, fisheries, water quality, watershed restoration, and cultural resources. The Karuk DNR has spent extensive resources on developing and writing an Eco-Cultural Resources Management Plan (ECRMP). Issues from the ECRMP should be incorporated into the waiver and USFS management practices. For example, starting on p. 64, there are detailed sections on reduction of fuel loading in riparian areas, burned areas, and post-fire suppression. Rather than have the USFS keep using their management actions which limit restoration potential for our watershed, they should have to coordinate with Tribal planning efforts detailed in the ECRMP and through government to government meetings with the Karuk Tribe.

Attached is an electronic copy of the draft Karuk ECRMP. We look forward to working with staff on USFS issues to successfully restore the mid-Klamath River. Please contact Susan Corum, Water Quality Coordinator at scorum@karuk.us or (530) 469-3456 if you have any technical questions regarding our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "L Hillman", with a long horizontal stroke extending to the right.

Leaf Hillman

Director
Department of Natural Resources
Karuk Tribe



Quartz Valley Indian Reservation
13601 Quartz Valley Road
Fort Jones, CA 96032
ph: 530-468-5907 fax: 530-468-5908

To: Robert Klamt
From: Quartz Valley Indian Reservation
Crystal Bowman, Environmental Protection Department Director
Date: May 17, 2010
Re: Comments on *California Regional Water Quality Control Board North Coast Region Order No. R1-2010-0029, Waiver of Waste Discharge Requirements For Nonpoint Source Discharges Related to Certain Federal Land Management Activities On U.S. Forest Service Lands In the North Coast Region*

INTRODUCTION/SUMMARY OF COMMENTS

The draft “Order No. R1-2010-0029, Waiver of Waste Discharge Requirements For Nonpoint Source Discharges Related to Certain Federal Land Management Activities On U.S. Forest Service Lands In the North Coast Region” (*Draft Waiver*) was issued by the North Coast Regional Water Quality Control Board in April 2010. We provide the following comments from the Quartz Valley Indian Reservation.

We generally support the concept of the proposed Waiver. The proposed three-part strategy appears generally sound:

- Maintaining and improving riparian zones by continued implementation of the USFS’ Aquatic Conservation Strategy (ACS) and Aquatic Management Strategy (AMS).
- Watershed restoration plans that require inventories, prioritization, and remediation of pre-existing sediment sources
- On-the-ground prescriptions with Best Management Practices (BMPs) for specific activities

The tiered approach of lesser requirements (solely record-keeping) for low-risk Category A activities (e.g. non-commercial firewood harvesting) and more stringent requirements for moderate-risk Category B activities (e.g. construction of new roads) makes sense. The Draft Waiver contains several other elements that we support, such requiring that on-the-ground prescriptions be made explicit in all contracts between the USFS its contractors and that the USFS be explicitly responsible for its contractors’ activities. The burden of proof must remain with the discharger.

Unfortunately, the *Draft Waiver* and Monitoring Program lack specificity and standards, and they are, therefore, mere statements of intent. Without more detail the initiative will not serve the evaluation and protection of water quality. In the comments presented here we provide specific suggestions for improving the initiative's specificity and applicability to water quality protection.

We recommend the following language be added to the waiver: "Where RWB finds conditions unique to the watershed or watershed segment (including, but not limited to, cumulative impacts, special hydrographic characteristics, TMDL 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) that further regulation be warranted separate from this waiver."

In the 'Comments on Major Issues' section below we address the following three shortcomings of the *Draft Waiver* and Monitoring and Reporting Program:

- Need quantitative limits on land use activities (including road density and timber harvest)
- Need annual inspection and maintenance of roads
- Monitoring and Reporting Program needs to be more specific

Following the 'Comments on Major Issues' section the 'Additional Comments on the Draft Waiver' and 'Additional Comments on the Monitoring and Reporting Program' sections contain recommendations for improving specific portions of the *Draft Waiver* and the Monitoring and Reporting Program, respectively.

We urge the Regional Water Board to substantially revise, clarify, and strengthen the *Draft Waiver* prior to adopting it.

COMMENTS ON MAJOR ISSUES

Need quantitative limits on land use activities

The impact of land use activities on water quality is dependent both on the extent of the activity (i.e. how widespread it is across the landscape?) and upon particular practices applied to the activity. In seeking to the limit the impacts of activities and land use practices on water quality, the waiver focuses almost solely on creating a system to regulate how and where activities should be conducted, but not how much of an activity should be allowed. This is an important failure in the initiative that needs to be remedied.

For example, even if a road system were perfectly designed and maintained (and the USFS system certainly is not), if there are too many roads (i.e. more than approximately 2-3 miles of road per square mile of land) then there will still be significant sediment and hydrologic effects on aquatic ecosystems. Moreover, due to the limited fiscal resources available for road maintenance, the higher the density of roads that exist on the landscape, the less chance there is that roads will be adequately maintained.

The USFS' Aquatic Conservation Strategy (USFS and BLM 1994) contains the following important standards and guidelines concerning road extent that we request be added to the *Draft Waiver*:

- "No new roads will be built in roadless areas in Key Watersheds." (page B-19)
- "Inside Roadless Areas - No new roads will be built in remaining unroaded portions of inventoried (RARE II) roadless areas." (page C-6)
- "Outside Roadless Areas - Reduce existing system and nonsystem road mileage. If funding is insufficient to implement reductions, there will be no net increase in the amount of roads in Key Watersheds." (page C-6)

In addition, we request that that quantitative limits for timber harvest, road density, and stream crossings also be included in the final Waiver (Table 1). Extensive comments on these topics were included in the Quartz Valley Indian Community's (2005, 2006) comments to the Regional Water Board regarding the Scott and Klamath TMDLs. Rather than repeat that information here, we refer Regional Water Board staff to those documents (see links below in references section).

Table 1. Management with cumulative watershed effects potential, relationship to streams, and recommended steps for management of risk with citations. Adapted from Table 5 of QVIC (2006).

Management Issue	Watershed Effect	Channel/Stream Effect	Remedy	Relevant Citations
Timber Harvest	Increased surface erosion, landslides, and sediment yield; elevated peak discharge, decreased base flows	Widening, decreased depth and pool frequency, increased heat exchange and warming. Reduced summer carrying capacity.	Limit timber harvest to 25% of a watershed over a 25-30 year period (1% of inventory harvested per year)	Reeves et al (1993), Berris and Harr (1987), Heeswijk et al. (1995), LaVen and Lehre (1977), Montgomery and Buffington (1993), Harr (1983)
Road Density	Road failures, increased sediment yield, elevated peak discharge, decreased base flows	Widening, decreased depth and pool frequency, increased heat exchange and warming. Reduced summer carrying capacity.	Limit road density to less than 2.5 mi./sq. mi.	Armentrout et al. (1998), NMFS (1995), NMFS (1996), Jones and Grant (1996), LaVen and Lehre (1977), Harr (1983)
Road Stream Crossings	Major sediment contributions when culverts plug, multiple crossing failure leads to catastrophic sediment yield	Widening, decreased depth and pool frequency, increased heat exchange and warming. Loss of riparian vegetation.	Limit stream crossings to no more than 1.5 per mile of stream	Armentrout et al. (1998)

Need annual inspection and maintenance of roads

Regular maintenance is essential for minimizing sediment contributions from road networks into streams. A standard recommendation is that all roads and drainage structures should be inspected at least once annually, prior to the beginning of the rainy season (Weaver and Hagans 1994). Additional maintenance is necessary during and following peak winter storms (Weaver and Hagans 1994). Given the extensive road networks present on USFS lands, this level of maintenance is unlikely occurring now. For example, the Klamath National Forest has approximately three times more road miles than can be annually inspected and actively maintained (de la Fuente and Elder 1998). Therefore, we request that the waiver include a requirement that the each National Forest involved develop and implement a plan to reduce its road network to levels than can be adequately (i.e. at least annually) inspected and maintained. Additional comments regarding road maintenance are included in the ‘Additional Comments on the Monitoring and Reporting Program’ section below.

Monitoring and Reporting Program needs to be more specific

General comments on Monitoring and Reporting Program

As with many aspects of the Draft Waiver, the Monitoring and Reporting Program suffers from a lack of specificity. Without more specifics in the Monitoring and Reporting Program, we cannot determine whether sufficient and appropriate monitoring will be set up to ensure accurate and timely inspections and reporting.

Who will do the monitoring and reporting?

Compliance with the Waiver will be identified and documented through the Monitoring and Reporting Program. That program element, therefore, is critical to having a transparent and effective corrective action plan and adaptive management process. Intensive inspections are necessary.

The Draft Waiver and Monitoring and Reporting Program propose that the USFS conduct all monitoring and reporting. Water Board is not going to be a part of that process, due to their limited funding and availability. We do not mean to be disrespectful to the USFS, but self-monitoring and self-reporting are generally, notoriously problematic. This has the potential for not being timely, accurate, nor effective in catching things that are violations. There will always be the likelihood and temptation for the discharger (even public agencies like USFS) to perform repairs so they do not get a violation. There is also the potential for intentional or unintentional abuse. There has to be a very clear method for self monitoring and reporting with penalties for not doing so in a timely manner.

Neither the Waiver nor the Monitoring Program provide clarity as to what constitutes a violation of the Waiver, nor is it clear what would trigger an abatement-requiring action. Almost all the Cleanup and Abatement Orders (and fines) issued by the Water Board are in direct response to complaints from the public or state agencies other than the Board about water quality problems caused by some activity. Who will fill that role on USFS lands that are remote from public view and typically not visited by other state regulatory agencies? Under the Waiver, the USFS is expected to police and report itself.

We recommend that in addition to USFS monitoring and self-reporting, the Water Board should require the USFS to hire an outside inspection team that reports to the Water Board and is funded by the Forest Service. This unbiased entity with professional (trained and qualified) technical specialists would perform at least a sampling of compliance and performance reviews each year. That would provide a QA/QC second-opinion on the effectiveness of work and water quality protection activities to be conducted under the Waiver. Specific suggestions for how an outside review could be conducted are included in the ‘Additional Comments on the Monitoring and Reporting Program’ section below

Representative in-channel beneficial use monitoring

The monitoring program proposes in-channel monitoring to assess the effectiveness of BMPs at a watershed scale:

“The purpose of in-channel monitoring of beneficial uses is to determine whether BMPs collectively are effective in protecting water quality at the watershed scale. Effectiveness will be assessed by monitoring trends in channel characteristics that affect beneficial uses and by comparing channel characteristics of streams downstream of intensively managed areas with those in pristine watersheds (the paired watershed approach).”

Such an assessment approach is problematic and is unlikely to be verifiable. It is also a money pit with no assurance that meaningful information will be obtained on the effectiveness of measures to protect water quality. Apparent improvements in downstream water quality may provide a false sense of security, but would not likely represent cause-and-effect relationships. The further downstream monitoring occurs from a restoration site or a managed area, the more difficult it is to determine that changes measured in water quality (good or bad) actually have anything to do with a particular project. There is simply too much “noise” in the system for it to be a reliable way to document the effectiveness of water quality restoration, protection, or control methods.

In addition, some water quality treatments produce an absence of measurable impacts, not an improvement in water quality. These treatments are designed to be preventive. For example, upgrading a culverted stream crossing, or replacing a culvert with a bridge, will have great long-term water quality benefits because such facilities are less likely (or unlikely) to fail in a large storm event. It would be difficult, however, to measure the effectiveness of these BMPs with in-channel water quality monitoring.

As noted in the excerpt quoted above, the Monitoring and Reporting Program proposes to use paired basins to evaluate the effectiveness of the water quality protection and control measures. The use of paired basins implies, however, that one of the watersheds will not receive the treatments needed to protect and improve water quality. Is this warranted? Can we afford to “sacrifice” a number of key or critical publicly-owned watersheds, i.e. by leaving untreated, unprotected watersheds as controls, in an uncertain attempt to measure an improvement in the treated basins?

It is our position that the technical ability to measure water quality improvements in treated watersheds versus untreated basins is a nearly impossible task and is not worth the effort nor resource sacrifice. Any water quality changes detected in such a monitoring program could likely be the result of myriad other, unrelated sources of water quality improvement or degradation.

To sort this all out is a serious and difficult research project. It is extremely costly to develop and perpetuate such a monitoring program, and it takes significant long-term commitment of resources and scientifically trained personnel.

Consequently, we recommend committing significant resources to site and effectiveness monitoring rather than to off-site water quality monitoring or paired basin studies. Water quality

monitoring should be restricted to detailed site monitoring or monitoring streams immediately above and below project areas or specific work sites. This reduces effort, limits the potential influence of outside sources of water quality “noise,” and evaluates the actual impacts and rate of recovery of water quality caused by, or attributable to specific project activities.

Need for public review of documents relied upon by the Waiver and Monitoring and Reporting Program

The Monitoring and Reporting Program document notes that a Klamath National Forest Sediment and Temperature Monitoring Plan and Quality Assurance Plan in being developed; however, it is our understanding that there are no opportunities for allowing Tribes or the public to participate in the development of this plan. This is unfortunate and does not promote transparency. We request that all current and future monitoring plans and monitoring protocols relied upon in the Waiver be open to comment by the public, or at least to other agencies such as Tribes. This is particularly important because much of the contents of the *Draft Waiver* and Monitoring and Reporting Plan are general and rely on references to other documents for establishment of details.

ADDITIONAL COMMENTS ON THE DRAFT WAIVER

In this section, we offer comments on specific sections of the *Draft Waiver*, referenced by page or section number.

Finding #4 - Activities (page 2) - Roads:

Road maintenance needs to be more closely defined in the documents. It should include any type of work on any road that could result in sediment delivery to a stream. It should include landslide cleanup.

Finding #4 - Activities (page 2) - Roads:

Road upgrading and road storm-proofing should be included as activities under ‘roads’. Also, it is currently unclear whether rock quarries and rock pits are included under roads or if they are considered a mining activity. We recommend explicitly listing rock quarries and rock pits under roads and road activities.

Finding #4 - Activities (page 2) - Restoration:

We recommend adding road storm proofing (upgrading) as an activity under restoration.

Finding #4 - Activities (page 2) – Fire Suppression:

We recommend changing “...impact riparian areas during the fire fighting...” to “...impact riparian areas during and after the fire fighting...”. Also, in addition to building of new roads, road re-opening should also be included as a covered activity. We suggest the development of a fire policy in the waiver that takes into consideration salvage logging after wildfires and the protection of water quality during fire fighting.

Finding #5 – page 3 - Mining:

The definition of mining should be clearer. Does mining include the development and use of quarries and rock pits? The Waiver should cover control of the discharge of sediment from quarries and rock pits.

Finding #14 – page 5 – Key Watersheds:

It is specifically stated in the draft Waiver that Key Watersheds are the cornerstone for maintaining and recovering habitat for anadromous salmonids. The selection of key watersheds, for the purpose of the Waiver, needs several changes. The Regional Water Board needs to be able to designate Key (Unique, Critical, etc.) Watersheds outside of the normal USFS process. There should be a public process for designating new Key Watersheds, including the ability for the public or other entities to petition for watersheds to be added to the list.

If the Waiver is to be successful, there needs to be a mechanism that enables the identification of key or unique watersheds that were not in the original USFS Aquatic Conservation Strategy. These would likely be the Tier 2 watersheds and other watersheds where the maintenance of water quality is critically important but which were never included in the federal process for designating Key Watersheds for California. These Tier 2 watersheds were employed on federal lands in Oregon and Washington. There needs to be a mechanism for their inclusion in the Waiver process.

Finding #14 – page 5, paragraph a – Key Watersheds:

The draft Waiver says that for Key Watersheds there is “a policy of no net increase in total road mileage in the watershed.” It should be noted that this is a potentially flawed policy that assumes that current conditions are acceptable in all key watersheds - even those with high road densities. Even a low road density in some watersheds can be seriously detrimental to water quality. There should be a transportation analysis (plan) and impact analysis that evaluates road densities and determines the core road network that is needed in each Key Watershed. Actions should be taken then to lower road densities to a level that minimizes or eliminates damage to water quality, aquatic habitat and other beneficial uses. That is, the policy should be to decrease road densities to a level that no longer threatens or negatively impacts water quality - not simply to maintain impacts at their current level.

Finding #14 – page 6, paragraph c – Watershed Restoration:

The emphasis on watershed restoration in the Waiver is important. It is also important, however, to have a watershed protection program in place to protect Key Watersheds from degradation. Thus, resources and funding often need to be focused on projects that are not designed to restore degraded conditions, but rather to make sure that high quality waters and habitat are adequately protected. It is much more cost-effective to protect high value, clean water and habitat than it is to wait until the water and habitat has become degraded and then spend money to try to restore these watersheds or keep it from getting worse.

Finding #27 – page 9 – The Waiver:

One of the three “primary substantive components” specified in the Waiver is the “timely implementation of watershed restoration plans.” This is a critical statement of intent in the

Waiver, but one that lacks a time-line with measures of performance or its means of accomplishment. First, “timely” needs to be defined, otherwise there is no way to enforce the Regional Water Board’s and Waiver’s objective. Second, the USFS is and continues to be severely short of operational funds and cannot adequately maintain the road system they have. How will the USFS meet a requirement that they conduct watershed restoration in a “timely” manner? The Legacy Roads and Trails program currently funded by Congress for restoration (mostly road decommissioning) is inadequate to make this happen. What will happen when and if the Legacy Roads and Trails program is discontinued? How will restoration be funded sufficiently to satisfy the Waiver’s requirements for timely implementation? Will the Waiver allow non-performance if there is a lack of money?

Finding #29 – page 9 – The Waiver:

The Waiver requires that the USFS inform the Water Board concerning its inventories of sediment delivery sites, an annual list of watersheds that are prioritized for restoration, and the progress that has been made in each watershed. Although it is stated that successful implementation of watershed restoration plans is required for compliance, there are no criteria that detail how much effort will be required to meet the Waiver objectives of reasonable progress. It is left to the negotiations between the Water Board and the Forest Service in a process that lacks transparency.

In private timberland Aquatic Habitat Conservation Plans several measures of progress have been employed by federal agencies to ensure that progress is adequate. These measures and goals can include such metrics as ‘miles of road required to be restored (upgraded, storm-proofed or decommissioned) per year or per decade’ or ‘dollars spent on restoration per year’ or ‘volumetric sediment delivery prevention per year.’ The target metric should be developed such that all the restoration work is projected to be completed in, say, 25- to 50 years (or whatever time frame is viewed as “reasonable” by the Water Board and the public), with the highest priority work being completed first. It is our belief that such a metric and restoration program/schedule should be developed and applied to the various Forests covered by the Waiver, and that the annual performance and plans for upcoming years be reviewed and approved by the Water Board each year.

The Waiver’s performance measures should not be left entirely to annual negotiations in a process lacking public input and transparency.

Finding #33-37 – page 10-11 – Monitoring and Reporting:

The Waiver is supposed to include monitoring and reporting requirements that will enable the Regional Water Board to assess the effectiveness of the Waiver at protecting water quality.

- The five “findings” of the Waiver that are included in this section do not constitute a Monitoring and Reporting Program of the sort normally developed and employed by the Regional Water Board. They are vague and rely on intent rather than the specificity needed to evaluate what is being proposed and whether or not it will be effective in informing the Board concerning the level of water quality protection that has been achieved.
- The USFS BMP evaluation program is included by reference in the Waiver as one of the measures of monitoring and evaluation that the Regional Water Board will rely on. The Regional Water Board has not, however, provided a review of the BMP evaluation process or program to demonstrate that it will be sufficient to accomplish the goals of protecting

water quality. Such a review, including an analysis of its effectiveness, should be made a part of the Waiver.

- It is recommended that the Regional Water Board, or an outside entity, evaluate the USFS BMP Evaluation Program to determine its suitability and the appropriateness and effectiveness of BMP implementation in protecting water quality.
- The proposed monitoring of instream conditions is vague and not adequately described to demonstrate that it will achieve its intended purpose (see discussions regarding this topic below in the ‘Additional Comments on the Monitoring and Reporting Program’ section).
- An annual training and education program for USFS staff, especially for those who work in the field or supervise/oversee contractors, is a critically important part of the Waiver program for protecting and restoring water quality. Such a program would include training on all aspects of planning, designing and implementing water quality protection and restoration measures. Whether it belongs with Monitoring and Reporting, or elsewhere, it should be an important component of the Waiver requirements.

Finding #42 – page 12 – Additional Findings:

This finding is deeply disturbing. In essence it states that because the Waiver will “overall result in a net benefit to water quality...” then watersheds with “high quality waters” (those exhibiting better water quality than is currently required by the state) may be degraded as long as such changes are “consistent with the maximum benefit to the people of the state, and will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies.”

It is our opinion that high quality watersheds should be protected and maintained as such and should not allowed to be degraded by management activities, and that those watersheds that are degraded should be restored to conditions that will at least meet minimum water quality objectives. Just because there is an overall net improvement of water quality on a National Forest does mean that the highest quality waters should be allowed to degrade. It is our opinion that we should not be looking simply for marginal net improvement, but that we should strive to protect the best of what there is and to improve those areas that have been degraded by Forest management activities. In other words: “Protect the best, restore the rest.”

Order #1 – page 13:

The Waiver stresses that riparian zones are to be managed to protect water quality, including stream temperature conditions. This objective does not consider the retention of large trees for recruitment of large woody debris (LWD) in the riparian zone. It is focused on maintaining “natural” shade conditions, but where topography provides sufficient natural shade conditions it neither addresses nor requires the retention of large trees in the riparian zone for other water quality and beneficial use purposes. Shade and cover in fish-bearing streams can be provided by downed organic debris as well as the formation and retention of deep pools. Proposals for canopy reduction should also consider LWD recruitment requirements.

Order #1 – page 13:

The Waiver indicates that “timely implementation [of riparian management strategies] is necessary...for compliance.” As elsewhere, no standards are provided to define what “timely” means.

Order #2 – page 14:

“The USFS shall actively address legacy or pre-existing discharges...” but there is no definition of “actively” nor is there a standard which defines when the USFS will be in - or out - of compliance. This and many other elements of the Waiver lack standards with which to define compliance or to provide a meaningful target or measure that would trigger enforcement standards, if compliance is not met.

Order #2 – page 14:

The Waiver does not include any requirement that the schedule proposed by each Forest meet a defined standard for treating legacy and pre-existing discharges. We believe the Forests (and the public and other stakeholders) should at least be given guidance on an acceptable schedule, including the percentage of the total program that should be completed each year and the duration over which the Regional Water Board expects each Forest to complete the tasks necessary to protect and restore water quality.

Will the water quality protection and restoration work be completed in 10 years, 50 years or 100 years? What is the expectation of the Regional Water Board?

Order #4 – page 14:

The Waiver indicates that the Regional Water Board and USFS shall work together “to resolve any issues associated with prioritization of watersheds, especially with regard to addressing existing discharge sites and/or...” (emphasis added) We strongly believe that they should work together to address both existing and potential discharge sites, not just the existing discharge sites. This would help in making sure that key watersheds with high quality water are protected while those that are degraded or impacted are restored.

Order #14 – page 15:

This section of the Waiver addresses compliance. Each Forest is apparently responsible for monitoring and reporting its own compliance. As we indicated above there are inherent and potential problems (and outright conflicts) with self-monitoring and reporting. Are Forests expected to report their own violations? Are there measures and triggers that can be used by the Forests to determine what standards should be employed when determining when and if a violation has occurred?

We believe there should at minimum be an annual unbiased independent evaluation of the compliance reporting process to ensure it is meeting the expected standards. The Regional Water Board does not have the staff to perform an analysis that would require a strong sampling of USFS activities that are – or are not – being reported. Our proposed studied evaluation and verification program would make the compliance reporting process more transparent and would provide the necessary stakeholder confidence and support.

Order #22 – page 16:

This section of the Waiver specifically excludes discharges from mining waste. It is not stated - and should be - whether or not mining includes the development and use of rock quarries, rock pits and alluvial mining in rivers and floodplains, or the discharge and disposal of such “mining”

waste, including the overburden that is produced by such activities. We believe these activities should be expressly included under the Waiver.

Waiver Categories - page 18 – Category A (Low Risk Activities), item #6:
Routine annual road maintenance should not qualify as having a low risk of impacting water quality. Literature and studies show that most USFS road systems have a hydrologic connectivity exceeding 40%. This means that any grading and surface disturbances to the road surface, ditch and cutbank on hydrologically connected roads will directly and negatively affect water quality. Road maintenance activities on hydrologically connected road surfaces and ditches should instead be classified as a Category B activity.

Waiver Categories - page 18 – Category A (Low Risk Activities), item #6:
There is no definition of what constitutes a “low impact replacement/modification/upgrading of a stream crossing culvert.” We agree that ditch relief culvert maintenance probably qualifies, so long as the culvert is not hydrologically connected. We suggest that any replacement of a stream crossing culvert on a stream that is flowing at the time of the proposed project work should be classified as a Category B activity.

Waiver Categories - page 18 – Category B (Moderate Risk Activities):
Road upgrading and road storm-proofing activities should be listed as Category B activities.

Waiver Categories - page 18 – Category B (Moderate Risk Activities), item #10:
Quarries and rock pits should be added to this Category B activity.

Waiver Categories - page 18 – Category B (Moderate Risk Activities), item #12:
Watershed projects should also specifically include erosion control projects, landslide remediation projects, bank stabilization projects, earth moving projects on a floodplain, and side channel development and improvement projects. These all have the potential to impact water quality.

Waiver Categories - page 19 – Category B (Moderate Risk Activities), Category B Conditions, item #1a:
Two conditions that should be added to the list are activities within, or which could affect, highly erodible soil areas, including decomposed granitic soils, and activities within or which could affect all hydrologically connected bare soil areas, including gullies, road surfaces or ditches

Waiver Categories - page 19 – Category B (Moderate Risk Activities), Category B Conditions, item #1b, vii:
Add the activity of developing or improving side channels and other earth-moving activities on flood plains.

Waiver Categories - page 19 – Category B (Moderate Risk Activities), Category B Conditions, item #1b, x:
Consider adding the following activity as item #x – “heavy equipment earth moving work (grading, excavating, etc) on hydrologically connected road surfaces and ditches.”

Waiver Categories - page 20 – Category B (Moderate Risk Activities), Category B Conditions, item #5:

This element of the Waiver requires the USFS to identify and treat discharge sites in a project area if the watershed has not already had a watershed restoration plan developed. It is important to be sure that such project-area treatments do not cut off legacy roads that may traverse through a project area thereby precluding future treatment of existing or potential discharge sites further along that road. Legacy (abandoned) roads generally need to be treated from their terminal end back to their junction with an active, maintained road. Treating a short section in the middle may inadvertently cut off access to the remainder of the legacy.

Waiver Categories - page 20 – Category B (Moderate Risk Activities), Category B Conditions, item #7:

The Waiver requires that activities be monitored pursuant to the Monitoring and Reporting Program. There is also the direct implication that if during an activity “on-the-ground prescriptions were not implemented or that unacceptable impacts occurred,” then corrective measures shall be applied “as soon as feasible”, but no guidance to the timing of the response is provided.

In other Monitoring and Reporting Plans we have seen requirements that such incidents have to be reported within, say, 24 hours and they have to be corrected within a designated timeframe unless the Regional Water Board grants a written exception and a revised schedule. As elsewhere in the Waiver, specificity is lacking in the description of the measures, how the measures are to be applied, and the timeliness of expected actions. This part of the Waiver will be functional only if self-monitoring and reporting are adequate and corrective actions are appropriate, effective and timely.

Waiver Categories - page 20 – Category B (Moderate Risk Activities), Category B Conditions, item #9:

The Waiver does not define what constitutes a “significant discharge” from grazing activities in a riparian zone that must then be reported.

Waiver Categories - page 21 – Category B (Moderate Risk Activities), Category B Conditions, item #14:

We recommend changing: “...adjacent to streams and drainages, or other locations or situations where likelihood of discharge exists.” to “...adjacent to streams and drainages, including hydrologically connected roads surfaces, ditches and other bare, erodible soil areas, or other locations or situations where likelihood of discharge exists.”

It is important to expressly point out that hydrologically connected bare areas, including roads, are features that directly impact water quality and should therefore be treated.

Waiver Categories - page 21 – Category B (Moderate Risk Activities), Category B Conditions, item #16:

It is extremely important that road densities be reduced in Key Watersheds and other “high risk watersheds”, rather than just stating that new road construction should be “minimized.”

Generally, road mileage needs to be reduced, not increased, in these critically important areas. This should be accomplished by performing transportation analysis (planning) and impact

studies that identify the location of high risk roads and that propose a core or minimum road network both needed for management and necessary for the protection of the aquatic ecosystem and high value water quality conditions of each such watershed. Perhaps some new ridge roads will need to be constructed while, at the same time, higher risk roads probably need to be eliminated.

Waiver Categories - page 21 – Category B (Moderate Risk Activities), Category B Conditions: unlisted (recommended addition) item #19:

Training and education of all Forest staff including contract specialists and contracting officer's representatives, supervisors, engineers, resource specialists, restoration specialists, laborers, technicians, equipment operators, and contractors need to be formalized and repeated on an annual basis. Water quality protection measures and the requirements of the Waiver need to be institutionalized throughout the organization. Failures and successes need to be a part of the educational experience so that information and knowledge is transmitted throughout the organization. Basic principles and advances in the science and conduct of water quality protection and monitoring need to be transmitted to appropriate staff. This type of training is routine for industrial timber companies operating under a federally-approved Habitat Conservation Plan.

ADDITIONAL COMMENTS ON THE MONITORING AND REPORTING PROGRAM

In this section, we offer comments on specific sections of the Monitoring and Reporting Program (MRP), referenced by page or section number.

Monitoring and Reporting Requirements (pages 1-2)

Much of the MRP relies on USFS monitoring protocols, including the Best Management Practices Evaluation Program (BMPEP) and the Klamath National Forest Sediment and Temperature Monitoring Plan and Quality Assurance Plan. The proposed Regional Water Board MRP "*relies on existing well-documented monitoring methods*" including the BMPEP monitoring protocols (USFS 2001) and the Stream Condition Inventory Protocols (USFS 2002). Unfortunately, "well documented" does not necessarily equate with technically adequate, effective, or appropriate for the purpose for which they are being employed in the Waiver and the MRP. The fact that the MRP is "relying" on these protocols makes them important, and makes it imperative that they receive outside scientific peer review as to their adequacy and ability to yield monitoring results that will differentiate project performance from background "noise" and water quality protection. The MRP offers no evidence or assertions that they are either adequate or appropriate, deferring instead to the USFS who developed the protocols. The USFS documents are methods manuals that appear to have been thoughtfully prepared and reviewed within the agency; however, it is unknown whether they received external review, or whether monitoring results using these protocols have appeared in peer reviewed journal articles. This does not mean these documents are not appropriate for the intended purpose; however, due to the reliance of the MRP on these documents, it is necessary that a detailed external review of these documents be conducted. It appears that such a review has not yet occurred, and we request the Regional Water Board organize a review prior to endorsing these documents.

The MRP states that “*Certain criteria and methods for decisions about sample site location...will be developed, in collaboration with the Regional Board staff, prior to initiation of the monitoring program.*” We request that these decisions (about sample size, sampling locations, and other specific monitoring elements) be made in an open process that includes the ability for stakeholders and the public to provide input, rather than being conducted solely between the Regional Water Board and the Forest Service. A public process would allow for more detailed and thorough review of the proposed monitoring program. It is likely that many of the selected monitoring sites, especially those for instream monitoring, will need to remain in place and actively monitored for a decade or longer (perhaps many decades). This initial selection process would be the best and perhaps only opportunity to provide input on the identification of monitoring sites and watersheds, and the specific monitoring protocols to be employed.

In addition to the specific comments provided below, we believe the Waiver’s MRP would benefit from outside audits of the BMPEP monitoring program. This outside audit should be focused on the USFS project areas and land management activities that are most likely to result in water quality impacts. The huge land area involved (approximately 7 million acres) precludes any one entity from observing all management actions. Sample projects that are monitored and inspected will necessarily be limited. The Regional Water Board will see very little of the Waiver program operations in the field, any may not be able to commit the time that would be necessary to be technically and intellectually involved in MRP field assessments and results. As it stands, the Regional Water Board will be the recipient of the data generated by the discharger – large quantities of data and and/or summary reports. This is not unusual, but is usually handled by MRP standards that are more stringent and unambiguous.

The one thing that is unusual about this Waiver and MRP is the scale of the two programs. The scale makes them fundamentally unique and it is not clear that the Regional Water Board has taken this into account. Even with a QAPP in place, there is likely to be too much occurring across the various Forests for there to be adequate quality control. In our opinion, the scale requires the use of outside audits, funded by the discharger, that provide the QA/QC that is necessary to validate the MRP data and support (or contradict) the conclusions that are forwarded to the Regional Water Board each year. There are several ways this might be done. First, the Regional Water Board might hire or contract outside the agency to complete the annual audits and spot checks. They would act as unbiased outside observers of the process and the data. Alternatively, the Regional Water Board might hire and supervise an in-field team of technically experienced monitors to audit and inspect projects and report on the monitoring results. Team expenses and salaries would be paid by the USFS but monitors would be hired and managed through an outside entity that would not require USFS or Regional Water Board supervision. In this manner, the discharger is obligated for the costs of the audit program, but does not participate in the staffing, supervision, selection of work tasks, analysis of data, synthesis and development of results, and transmittal of findings. The Regional Water Board then would have new and valuable information that would allow it to better evaluate the program and its effectiveness at protecting and improving water quality. Use of an outside team would also address the potential conflict of interest issues noted in the ‘Monitoring and Reporting Program needs to be more specific’ section above.

1. USFS-Wide Monitoring

1.A.1. Administrative Implementation Monitoring (page 2)

This section notes the projects in Category B (moderate risk) will implement monitoring based on a “checklist” approach; however, an example checklist is not available for review in the MRP. The Regional Water Board states that this process will be the “*primary systematic means for early detection of potential water quality problems...*” but the MRP does not provide any details or guidance on exactly how this is supposed to work. What would be the trigger on the checklist for determining that the project represents a potential water quality problem? For the checklist to be successful in identifying potential water quality impacts, it has to contain clear quantitative guidance or triggers that would compel the USFS to remediate problems.

The MRP also requires the checklist monitoring be completed “*early enough to allow corrective actions to be taken, if needed, prior to the onset of the first winter.*” It is important that the contents of the check list be reviewed and that a specific date for submission of the annual checklist is identified by the Regional Water Board in the MRP. Without the specific due date, this part of the MRP becomes difficult or impossible to enforce. Also, it should be clarified in the MRP who creates the checklist for each project (will it be the Regional Water Board, or the USFS?).

1.A.2. BMP Evaluation Program Monitoring (pages 3-4)

A. The BMPEP monitoring program is proposed to employ a random site selection process, as currently used by the Forest Service. This has statistical benefits, but we believe it would be better to employ a more focused, non-random sampling strategy. The goal of the Waiver program is to “*better and more efficiently*” protect the beneficial uses of water across the landscape, and the MRP is designed to “*allow the Water Board to assess the Waiver’s effectiveness at protecting water quality.*”

From our perspective it may be more important to strategically focus the BMP monitoring in places where the BMPs are more likely to be “stressed” and water quality is more highly threatened with potential impacts. How is it helpful to monitor BMP effectiveness in locations where there is a minimal potential for BMPs to fail or perform poorly, and where there is only minimal threat to water quality? The USFS already has a random BMPEP process for their lands and perhaps that should be continued outside the Waiver process. That would provide information on BMP performance in less sensitive project areas. The Waiver MRP BMPEP process should be strictly applied to prioritized sites and activities in more vulnerable locations.

The MRP currently does not specify what type of monitoring should be employed for “*follow-up monitoring.*” Follow-up monitoring of ineffective or poorly implemented sites, as stated here and as required in the MRP, should employ the same protocols as the BMPEP effectiveness monitoring.

B. Road patrols following “major storm” events are to be a part of the water quality monitoring and protection program. This is an exceptionally important part of the water quality Waiver and

MRP program and the stated requirement needs some expansion, as well as clarification and elaboration:

- First, in addition to storm patrols, all roads on each Forest should be inspected **annually, prior to the onset of winter** to identify potential failures and sediment sources that threaten water quality. This would include stream crossing culverts, unstable fillslopes, and other active or potentially active erosion and sediment delivery sites. National Forests across the Pacific Northwest are well known to lack sufficient resources to maintain their forest road systems, so this is a critically important program element for the MRP. This type of inspection program is typically required and accomplished by large private industrial forestland owners operating under Aquatic Habitat Conservation Plans (e.g., Green Diamond Resource Company and Humboldt Redwood Company) and it is equally important on National Forest lands. If a Forest cannot inspect all roads every year, then it should be required to develop and implement a long-term plan (including explicit timelines) to reduce their road network down to a level that can be inspected every year. In the interim period prior to full implementation of such plans, then each Forest should be divided into perhaps 3 sub-units, to be inspected once every three years. An alternative for this interim period is that the Forest road network could be prioritized and ranked according to its susceptibility to sediment-producing events, with high priority roads inspected every year, moderate priority roads inspected every other year, and low priority roads inspected every third year. The annual inspection process is critically important for maintaining and protecting water quality. Post-storm road inspections are necessary but not sufficient because they are largely reactive and not proactive in their approach to protecting water quality.
- The patrol program needs specific definition. For example, there is no definition of a “*major storm*” and this is what is supposed to trigger post-storm inspections. Triggering storm characteristics are typically stated as thresholds: daily precipitation (inches of precipitation in 24 hours) or storm precipitation (inches of precipitation over a storm period, such as 7 days). The thresholds of accumulated precipitation that trigger the road inspections (patrols) will be different across the landscape, across various geologies and soil units, and across the various National Forests and Forest Districts. Each designated zone or area would be defined by a geomorphically important storm event in that area. Forests can be divided into geographic, geologic, climatic, or elevation zones and monitored by continuously-reporting weather stations and rain gauges that reflect the accumulated rainfall that has occurred in the various zones.
- Finally, the road inspection program needs to have a monitoring element that requires the Forest to document, record, and report the nature and magnitude of the problems that are encountered and the treatments that are applied as a result of the road patrols. This data will be important in refining their knowledge of the risk of various roads and road systems to failure and water quality problems. This requirement is currently absent from the MRP, and we request that it be added.

1.A.1. Representative in-channel beneficial use monitoring (pages 3-4)

The in-channel monitoring program is supposed to allow the Regional Water Board to “*determine whether BMPs collectively are effective in protecting water quality at the watershed scale.*” As noted above in the ‘Monitoring and Reporting Program needs to be more specific’ section of these comments, in-channel beneficial use monitoring may not be worth the expense and effort.

The MRP states that because the Forest budget is limited, in-channel monitoring will be restricted. This is not the typical manner in which MRP criteria are developed. It is our understanding that the Regional Water Board develops the MRP to inform them whether or not the water quality protection and improvement actions are effective. For large industrial landowners the cost of the monitoring program usually appears to be less important than its technical ability to provide answers to the Regional Water Board. We were surprised to see such an explicit deference to the availability of funds to carry out the MRP. If a property owner cannot afford to conduct the monitoring program that is needed to evaluate the impacts of their activities, then perhaps their activities should be reduced to the level that can be adequately monitored.

The project area (approximately 7 million acres) is so large and diverse that the stated desire and intent of the Regional Water Board to restrict the MRP in-channel monitoring to “*a relatively small number of watersheds and sites*” that are representative of “*large landscapes*” within the national forest appears to undercut the ability of the program to adequately represent the various environments of each Forest. The sample size may also be reduced to the extent that the results then suffer from a sample size that is insufficient to evaluate the Waiver program and to determine the potential impacts to water quality from the land management projects that are carried out on the ground.

The MRP proposes to monitor trends in channel characteristics but the Pacific Southwest Stream Condition Inventory (SCI) monitoring methodology (USFS 2002) includes a number of other parameters that are also monitored and employed to evaluate the response of the channel to upstream land management and/or restoration activities. It is unclear (unstated) if the MRP will employ these other monitoring protocols, including a large number of channel measurements and characteristics, habitat parameters, water quality measurements (e.g., temperature), shading, organic debris parameters, and substrate parameters (e.g. particle sizes and macroinvertebrates). It seems important to provide a robust multivariate analysis of channel conditions and not just rely on basic channel characteristics to inform the process. These ambiguities in the MRP should be clarified.

As previously noted, paired watershed studies are fraught with complexities and difficulties in assigning cause and effect relationships to changes in observed variables and parameters. The MRP does not address how these typical problems will be addressed (other than to state that the paired watersheds will be screened for a close match of their basic conditions).

Paired watershed studies require long term investments in resources, capital investments and personnel and are generally considered research activities. The MRP has not stated the intended term of the paired studies, nor how long a time period will be required to satisfactorily evaluate

the management that is undertaken. The MRP does not indicate the level of investment that is expected, the duration of the “long term” project or the degree of scientific involvement and statistical expertise that will be required to analyze the data and develop the findings. If they are restricted to smaller watersheds, as the MRP suggests, then the duration of “intensive land management” in the managed watershed will be limited. What is proposed when the managed watershed is no longer being actively and intensively managed? Is there a reason to monitor watersheds that are no longer being managed? Will monitoring then be initiated in new watershed pairs? There are many unknowns in the in-channel MRP program, as we request that they be clarified to the extent possible.

When developing each in-channel monitoring project in the MRP it will be important for the Regional Water Board and the Forest Service to define the specific goals and objectives of the work at that monitoring location or site so that proper tools can be selected and employed to answer the relevant questions. Each monitoring location may have its own specific informational needs and methodologies. It will also be important to identify the standards by which success (improvement) or failure (deterioration) can be measured and reported, which will then trigger a remedial action.

It is not stated by what method it will be determined whether a deterioration in water quality or monitored channel conditions can be ascribed to management actions or to other unassociated events in a watershed. Management may not be the only cause of deteriorating conditions in a monitoring reach. As indicated in the MRP, this source of confusion or ambiguity can be diminished by selecting monitoring sites in small watersheds where other events are less likely to complicate monitoring results and data interpretation. However, this restriction then limits the ability of the Forest and the Regional Water Board to extrapolate the monitoring results across the landscape to other similar watersheds and landscape areas.

The MRP states that if SCI monitoring reveals “*adverse impacts*” to a stream channel have occurred, then restoration plans are to be developed and implemented on the upstream managed areas.

- The MRP does not define the threshold for what constitutes “*adverse impacts*.” That definition is important so restoration actions can be taken when it is exceeded. When are conditions considered to be adversely affected?
- If SCI channel monitoring is to be conducted at intervals of five years, then the problems that caused the degradation in channel conditions and beneficial uses could be up to five years old. The damage will have already occurred here and perhaps at other comparable watershed sites across the Forest.
- The MRP does not indicate how the implementation of restoration, triggered by the identification of adverse impacts at one or more “representative” monitoring sites, is to be extrapolated across the landscape to other areas that have similar watershed characteristics and/or management actions. To be of value, the channel monitoring site would serve as a bellwether indicator for similar landscape areas, or it would serve as a trigger for widespread restoration and modification of land management practices judged to have contributed to the reduction in beneficial uses in the monitored watershed. It is not obvious (it is not stated) how the Regional Water Board or the Forest Service will use the

monitoring data to extrapolate changes in practices or restoration actions that may need to be taken across the landscape.

Sincerely,

Crystal Bowman
Environmental Director

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To: Robert Klamt

From: Don Rivenes, Stakeholder on the WQMP update

Date: May 17, 2010

Re: Comments on *California Regional Water Quality Control Board North Coast Region Order No. R1-2010-0029, Waiver of Waste Discharge Requirements For Nonpoint Source Discharges Related to Certain Federal Land Management Activities On U.S. Forest Service Lands In the North Coast Region*

R1 USFS Draft Waiver Comments and Questions

- 1) Point 2 should mention protection of fish and wildlife
- 2) Point 20 says it does not cover mining discharges and it should.
- 3) Point 14 does not mention birds and mammals as aquatic resources
- 4) Point 14 b refers to Watershed Analysis. FS should indicate what watersheds have gone through such an analysis.
- 5) Point 14 c refers to Watershed Restoration. What funds are committed to this and what timetables have been set up for completion of the priority restorations.
- 6) Point 16 refers to the MAA as a key agreement, which I believe the SWB said was going away. What replaces it?
- 7) Point 29 refers to legacy sites. Mining legacy non-point source problems should be addressed here and elsewhere. What is the timetable for addressing remediation?
- 8) Point 30 refers to monitoring to make sure conditions are met. A baseline must be established first. What is the penalty for non-compliance? How does the public ensure that the monitoring gets done?
- 9) Point 32 states: "By regulating these discharges and activities under a general waiver, it simplifies and streamlines the regulatory process and allows Regional Water Board staff to focus its limited resources on working with the USFS to protect water quality." What are the standards and guidelines for reviewing the waiver after 5 years for renewal?
- 10) Point 33 states: "The BMPEP provides annual on-site assessments of a randomly selected subset of all BMPs that were implemented as part of activities conducted within a Forest, assessing both proper implementation and effectiveness. Implementation of effective BMPs is necessary to reach water quality goals and objectives. BMPEP results from 2003-2007 show that 86% of BMPs were rated as implemented and that 89% of those were rated effective." What do they do with the 14%? If a randomly selected subset shows 14% not implemented, and 11% of those implemented were ineffective, what about the rest of the other BMPs that were not tested?
- 11) Under point 38, when does the Water Board review the BAER techniques to see if they can be improved (type of retardants, restoration, etc.)?
- 12) Point 40 states: "The probable environmental consequences of the emergency action and mitigation of environmental effects are taken into account to the extent practical." Does the Water Board review these actions from time to time to see if they were practical (since NEPA is bypassed)?

- 13) Under orders, point 16, what standards will be used to evaluate the application of pesticides? What about aerial application and penalties for misuse?
- 14) Under Orders, point 20 should cover non-point mining discharges.
- 15) On page 23 point 1, is the NOI part of the public project notification?
- 16) On Page 24 Monitoring Requirements, is there a baseline established, and what is the penalty for non-compliance? Are macro-invertebrates included? What about birds and mammals that use the watercourse or the surrounding vegetation?

Thank you for your consideration of these comments. If this is to be model for other Regional waivers or a Statewide waiver, it should be viewed as such.

Sincerely,

Don Rivenes, Executive Director
Forest Issues Group

**CALIFORNIA CATTLEMEN'S ASSOCIATION
CALIFORNIA FARM BUREAU FEDERATION
CALIFORNIA FORESTRY ASSOCIATION**

May 18, 2010

Mr. Robert Klamt
North Coast Regional Water Quality Control Board
5550 Skylane Blvd. Suite A
Santa Rosa, CA 95403

Submitted Via Email: rklamt@waterboards.ca.gov

RE: North Coast Regional Board Proposed Waiver for Activities on USFS lands

Dear Mr. Klamt,

The California Cattlemen's Association (CCA) and the California Farm Bureau Federation (CFBF) appreciate the opportunity to comment on the Proposed Waiver for Activities on United States Forest Service (USFS) lands. Our organizations represent Forest Service permittees who successfully manage public lands to protect water quality and improve the ecological health of forest landscapes.

We would like to begin with the premise that the current Water Quality Management Plan (WQMP) is successfully protecting water quality on National Forest lands. The Forest Service's Best Management Practices Evaluation Program (BMPEP) clearly indicates that the current WQMP and its Best Management Practices (BMPs) are successfully monitoring and protecting water quality on California's National Forest lands. Therefore, the best approach is to have the only condition of the waiver be continued implementation of the Forest Service's existing protocols.

Below we have listed specific concerns relative to provisions outlined in the proposed draft.

- 1) **Waiver Should be Narrowly Tailored.** The waiver should be drafted in a manner so that the only required conditions are those necessary to comply with Porter-Cologne. Unless a condition is unquestionably required, it should be removed. The purpose of this narrowing is not to allow for degradation of water quality or to thwart the authority of the Regional Water Board, but to minimize regulatory overlap and the inevitable regulatory conflict that comes with such overlap.

This general concern of regulatory overlap and conflict is based upon those parts of the waiver that make actions not explicitly required by Porter-Cologne a condition of the Waiver. This means that if one of those conditions is violated, even though the "violation" is not contrary to Porter-Cologne, the USFS is in violation of the waiver.

A good example of the challenges posed by the kind of interagency relationship proposed in the draft waiver is found in the difficulties associated with timber harvest on private lands. There, Cal Fire's management of timber harvest has been made much more difficult by its interaction with the Regional Board. Since the Forest Service does not have the same sort of obligatory

relationship with the Regional Board it should make every effort to minimize its obligations under the waiver.

We believe the Forest Service is well suited to managing Forest Service lands in a manner which maintains and improves water quality while also providing for the multiple uses of these lands. We strongly support keeping it that way.

- 2) **Forest Service Jurisdiction.** The Forest Service should remain the sole agency to manage grazing permits and timber contracts; the Regional Board should not have direct regulatory authority over permittees or contractors under any circumstances. There are several locations throughout the document where the Regional Board is granted more authority than is required by Porter-Cologne. Two distinct relationships should exist: one between the Forest Service and permittees/contractors, and one between the Forest Service and the Regional Board.

As an example, the Forest Service and permittees/contractors are already required to comply with the Clean Water Act and the Porter-Cologne Act. This compliance currently occurs via Forest Plans, as well as the project-level terms and conditions required in grazing permits and timber contracts. So, as long as permittees comply with the terms and conditions of their grazing permit, and timber contractors with their contracts, they should be in compliance with the Regional Board waiver.

- 3) **Forest Service Authority.** The phrase, “the Forest Service shall” is located in several places throughout the document. It is concerning that the Regional Board is exerting this much unnecessary control over the Forest Service. In many cases, the Forest Service is being required to consult with the Regional Board on management decisions; this is inappropriate. It is essential for the Forest Service to remain the primary manager of activities on National Forest lands and maintain a level of autonomy especially in a case of disagreement.
- 4) **Regional Board Regulatory Jurisdiction.** The Regional Board oversteps their regulatory jurisdiction in many places throughout the document, specifically with regard to land use, management practices, and pesticide application. The Regional Board can only require a water quality objective, not the management practices by which you might achieve that objective. Specific areas of inappropriate jurisdiction include:

- A. **Re: Land Use:**

Regulating land use is not within the purview of the Regional Board. The Water Code and the Basin Plan focus on water quality and activities which may impair water quality. While the Regional Board has authority to prohibit an act which may result in a discharge, the Board does not have authority to require an act which is unrelated to discharges to waters of the state (Wat. Code, § 13360).

- B. **Re: Management Practices:**

The Regional Board does not have the statutory authority to mandate specific management practices. (Wat. Code, § 13360(a).) The Regional Board has the authority to adopt water quality control plans, water quality objectives to “ensure the reasonable protection of beneficial uses,” and waste discharge requirements. (Wat.

Code, §§ 13240, 13241, 13242.) However, it cannot dictate the management and business practices undertaken by a landowner to reach the applicable discharge goal. Specifically, Water Code §13360(a) provides:

No waste discharge requirement or other order of a regional board or the state board or decree of a court issued under this division shall specify the design, location, type of construction, or particular manner in which compliance may be had with that requirement, order, or decree, and the person so ordered shall be permitted to comply with the order in any lawful manner.

Several provisions of the waiver intrude upon the Forest Service's management practices. Because such provisions relating to management are contrary to the Water Code and will be detrimental to the efficient management of Forest Service lands, they should be removed.

C. Re: Pesticides:

Given the need for proper and effective oversight of pesticide use, pesticide regulation is a matter of "statewide concern" that must be regulated from the state level. (Food & Agr. Code, § 11501.5(a).) The Legislature made this unmistakably clear by commencing the section with "this division and Division 7 (commencing with Section 12501) are of statewide concern and occupy the whole field of regulation." (Ibid.) The plain meaning of the words within this sentence illustrates the Legislature's intent for state regulation of pesticides and such regulation to be conducted by the Department of Pesticide Regulation and not the Regional Water Quality Control Boards. Thus, the imposition of pesticide restrictions for ground and aerial application by the Regional Board is improper and exceeds statutory authority.

- 5) **Human Waste.** While we recognize the proposed waiver does not cover the discharge of human waste, we are very concerned that this issue is not being addressed with the same intensity as activities covered under the waiver. The ever-increasing recreational use of National Forest lands is certainly causing human waste discharges to increase. Human waste impacts to water quality can be severe, and should be addressed in any comprehensive water quality regulation. Essentially, we are concerned that the waiver is trying to "fix" problems which may be caused in some meaningful degree by unregulated activities.
- 6) **Regional Board Implementation.** The implementation intent of the Regional Board has been clearly indicated in recent communications. In an e-mail you sent to the State Board's Stakeholder Group (via Gaylon Lee) on 3/30/10 you state that, "we [Regional Board] will be involved in the yearly review of the allotment annual plans." It is unnecessary and inappropriate for USFS to allow Regional Board involvement in AMPs and AOIs (see #4 above). Not only are we concerned about how this might impact permittees/contractors, but this will impede what is already a cumbersome permit renewal process by the Forest Service.

In the same e-mail, you respond to a question about enforcing the waiver by stating that, "we can take other actions, and can fine individual contractors and permittees." This is a major concern.

While intentional violations may justify permittee/contractor fines, the broader concern is that outside advocacy groups will now be endlessly campaigning for contractor/permittee fines.

- 5) **Additional Monitoring and Reporting is Unnecessary.** The Regional Board does not need to require additional monitoring and reporting in order to comply with Porter-Cologne. The Monitoring and Reporting Program associated with this proposed waiver is unnecessary. If the Regional Board wants monitoring over and above what a waiver requires, perhaps it should be through a 13267 order.

More importantly, the Forest Service already conducts both on-the-ground water quality monitoring, and effectiveness monitoring of BMPs. Again, we would point out that the WQMP and associated BMPs are successfully monitoring and protecting water quality on California's National Forest lands.

- 6) **Cost to Forest Service.** It appears that the implementation of this proposed waiver will be very time intensive, and thus costly, for the Forest Service. Given that we find much of this document to go beyond what is legally required, it would be unfortunate to spend so much of the Forest Service's resources implementing this waiver. Current fiscal challenges will likely require funds be diverted from current and ongoing Forest Service activities to implement the waiver. The Forest Service is already in compliance with all Clean Water Act and Porter-Cologne regulations via existing Forest Plans and project-specific terms and conditions. Therefore each provision should be assessed for its cost to the Forest Service.

Again, we appreciate the opportunity to comment on the Proposed Waiver for Activities on USFS Lands. Should you have any questions, please don't hesitate to contact either CCA or CFBF.

Sincerely,



Justin Oldfield
Director of Regulatory Affairs
California Cattlemen's Association



Elisa Noble
Director, National Affairs & Research
California Farm Bureau Federation



Steve Brink
Vice President, Public Resources
California Forestry Association



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 653-4298
Website: www.fire.ca.gov



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N C R W Q C B

MAY 26 2010

<input type="checkbox"/> EO	<input type="checkbox"/> WMgmt	<input checked="" type="checkbox"/> Admin
<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input type="checkbox"/> Reg/NPS	<input type="checkbox"/> Cleanups	Date: _____

May 17, 2010

Mr. Robert Klamt
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

Subject: Comments on the draft Categorical Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land Management Activities on Forest Service Lands in the North Coast Region

Dear Mr. Klamt:

Thank you for the opportunity to comment on the draft Categorical Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land Management Activities on Forest Service Lands in the North Coast Region.

CAL FIRE supports the adoption of the draft waiver for National Forest System (NFS) lands on the North Coast with two suggested changes listed below. CAL FIRE strongly recommends that:

1. The use of hand crews now listed under "Category B – Moderate Risk Activities" item numbers 3 and 6 be moved to "Category A – Low Risk Activities."
2. Pile burning now listed under "Category B – Moderate Risk Activities" items number 3 and 6 be moved to "Category A – Low Risk Activities."

Research, monitoring and practical experience all support the fact that hand crew work and pile burning are activities of low risk to water quality when done in accordance with Best Management Practices (BMPs). Categorizing these two activities as low risk will allow limited resources to be focused on the other activities which are appropriately listed as moderate risk to water quality. The result will be better water quality outcomes.

The draft waiver incorporates existing processes and monitoring of the Forest Service, such as Administrative Implementation Monitoring and Best Management Practice Evaluation Program (BMPEP) Monitoring, designed to protect water quality. CAL FIRE supports the concept of using existing processes and monitoring in waivers as well as the proposal to use the waiver to cover TMDL compliance.

Mr. Robert Klamt
May 17, 2010
Page Two

Thank you again for the opportunity to comment on this draft Waiver for NFS lands on the North Coast. If you have any questions about this letter please contact Clay Brandow of my staff at (916) 653-0719.

Sincerely,



William E. Snyder
Deputy Director, Resource Management

cc: Crawford Tuttle
Duane Shintaku
Dennis Hall
Chris Browder
Leslie Markham
Bill Schultz
Mike Bacca

CAL FIRE
P.O. Box 944246
Sacramento, CA 94244-2460



NCRWQCB

MAY 26 2010

Mr. Robert Klamt
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, CA 95403

EO
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 Timber
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 Date

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