

Response to Comments

Categorical 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

Order No. R1-2010-0029

Background

Staff to the Regional Water Quality Control Board, North Coast Region, have proposed a waiver of Waste Discharge Requirements for certain nonpoint source discharges associated with certain federal land management activities conducted by the United States Forest Service on (USFS) on National Forest System lands in a *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* (the "Waiver") through adoption of North Coast Regional Water Quality Control Board (Regional Water Board) Order No. R1-2010-0029. The Order revises and supersedes the existing Waiver for timber harvesting activities on federal land (Order No. R1-2004-0015).

The proposed Waiver was posted for public review on the Regional Water Board web site and mailed to the USFS and a number of interested parties on March 4, 2010 preparatory to a Regional Water Board public workshop in Eureka, California on March 25, 2010. Comment on the Waiver was received at the workshop, and some modifications were made to the Waiver in response to those comments.

The revised Waiver was posted on our web site and emailed to an extensive interested parties list on April 13, 2010 for a 30-day public review period with a Notice of Public Hearing, an Initial Study, and a Mitigated Negative Declaration. The state Clearinghouse also released copies of those materials to interested state agencies, and posted it on their web site on April 12, 2010 (SCH # 2010042031).

The public comment period ended at 5:00 pm on May 17, 2010. We received six (6) comment letters from the following:

- US Forest Service, Region 5
- Klamath Forest Alliance and Environmental Protection Information Center
- Karuk Tribe
- Quartz Valley Indian Reservation
- Forest Issues Group
- California Cattlemen's Association, California Farm Bureau Federation, California Forestry Association

This report presents those comments and our responses, including reference to changes made to the proposed Waiver as a result of comments received.

Commenter: US Forest Service, Region 5

The Regional Forester, US Forest Service, Region 5, submitted comments on the Waiver on May 14, 2010. The following is the staff response to those comments:

1. 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.

Staff Response: *Thank you for your support and for the hard work your staff have put into our discussions and development of the approach. We will continue to participate in the statewide effort as well.*

2. 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.

Staff Response: *We are very close to joint agreement on the monitoring approach and scope. It is our goal to reach consensus in the very near future on the number and locations of the monitoring sites, as well as the parameters to be measured.*

3. 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.

Staff Response: *We have reviewed proposals to include specific language in contracts and have selected an approach that will meet our needs and that we understand is workable with the USFS contracts system. We will continue to work with your staff and the Forests staff to resolve any issues that may arise.*

**Commenter: Klamath Forest Alliance
Environmental Protection Information Center**

1. General Comments: 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.

Staff Response: *There is no guarantee when or if the statewide process will result in a timely and complete waiver that will meet all our needs. Waivers have a five-year life span. It would be inefficient to go to all the trouble of adopting the Region One waiver, only to have it expire in one year and have to start the whole process over again. In any case, the Regional Water Board can modify a waiver prior to its expiration.*

The statewide effort explicitly states that it will not usurp existing waivers in the region. This waiver is designed to address existing conditions and programs in our region, and would be a better "fit" than a more generalized version. Additionally, any future upgrades to the WQMP are automatically incorporated under Waiver condition 8.

2. General Comments: 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.

Staff Response: *This Waiver improves the efficacy of existing BMPs by requiring and making enforceable on-the-ground prescriptions that will implement the BMPs. In addition, Regional Water Board staff are participating in the State Water Board process to improve the BMP manual, and upgrades that are equally or more protective of water quality are automatically incorporated under Waiver condition 8.*

3. Finding 27: 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.

Staff Response: *Should a significant component of the USFS planning framework relied on in this Waiver be "abolished", it would likely result in revocation of the Waiver and loss of coverage. We have no first-hand information that the USFS plans to take such action. We would need to initiate discussions should such an action be considered.*

4. Finding 28: 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).

Staff Response: *Such a broad-brush approach could result in misclassifying stable areas as unstable. USFS guidelines currently establish specific guidelines and BMPs to reduce and minimize triggering/re-activating inactive landslides and earthflows. Additionally, it is not supportable to include all earthflows as riparian reserves as they have different functions and protection. The classification of geologically unstable areas are done on a site-specific basis. The USFS Planning Framework includes professional geologic and hydrologic review of unstable features, including equipment and activity restrictions, and review by our staff prior to enrolling a site-specific project under the Waiver. If unstable areas are not addressed adequately in the project, Waiver coverage may be denied and individual WDRs or individual waiver would have to be prepared.*

5. Finding 29: 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.”

Staff Response: *The proposed 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. This is intended to provide feedback to ensure that we know how the restoration activities are proceeding, and if reasonable progress is being made. Additionally, the development of plans and keeping them current (annual reviews) places the USFS in a better position to vie for limited grant funding to address problem areas.*

Successful implementation of watershed restoration plans is required for sediment and temperature TMDL compliance. Annual updates allow Regional Board staff to assess whether reasonable progress is being made in this regard. In addition, 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.

6. Finding 31: 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.

Staff Response: *The sensitivity of the landform including the proximity to valuable resources is critical in the evaluation process and is taken into account during the USFS planning process for the activity. This information is required to be submitted with the application for enrollment of a project in the Waiver. If unstable areas are not addressed adequately in the project, Waiver coverage will be denied and individual WDRs or individual waiver would have to be prepared.*

7. Finding 32: 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.

Staff Response: *The Waiver is conditional; in order to qualify for coverage, the USFS must meet all conditions. The USFS has a significant geologic review component at both the planning and project level. It includes the evaluation of*

earthflows and other mass movement features. (Please see response to comments 4 and 6.)

Road construction and reconstruction on earthflows do require significant review, however, a blanket requirement to protect as if they are part of the riparian reserves is not appropriate and overly restrictive. We prefer to address unstable areas on a site-specific basis, instead of lumping all into a single approach.

Riparian reserves are intended to provide conditions for protection of aquatic resources. There may be other classifications that protect unstable areas but aren't meant to provide shade, food, and oxygen for aquatic species.

Fire suppression is an emergency action when time is of the essence and resource decisions must be made quickly. Proscribing their activities could complicate the effective response to fire situations. However, we have included a condition for the review of USFS fire suppression guidance and post-fire response during the statewide review of the USFS Water Quality Management Plan (see new Waiver condition 5).

Regarding grazing, the proposed Waiver establishes new conditions for the USFS and reporting of activities that were not in the existing waiver. As a result, the Regional Water Board will be provided more performance evaluations and increase and improve their review, as well as performing more field inspections than we have previously done.

In the final analysis, if an activity is not compliant with the Waiver, then it is not compliant with TMDLs and another regulatory mechanism, such as individual WDRs or waiver, would have to be prepared.

8. Finding 33: 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.

Staff Response: *The Waiver includes a significantly enhanced monitoring and reporting program to evaluate BMPs for specific activities. One component of the monitoring is the evaluation of the effectiveness of particular BMPs (including those for grazing), which are developed and implemented in response to certain activities as well as in-channel sampling to identify current background (ambient) conditions. Additionally, the Waiver requires the USFS to involve the Regional Water Board staff in review of grazing allotments. (Please see response to Quartz Valley Indian Reservation comments 8 and 17.)*

9. Finding 37: It is not appropriate to rely on a document [Klamath National Forest TDML monitoring plan] 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.

Staff Response: *We have removed the language referencing the plan as potentially Waiver compliant. The monitoring plan has undergone substantial review and involvement from Regional Water Board staff. Monitoring plans are not required to be reviewed by the public; however we are exploring opportunities for public input in the future (please see response to comment 9, Quartz Valley Indian Reservation). The Plan will be a public document when approved by the Executive Officer.*

10. Finding 38: 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.

Staff Response: *Post-fire rehabilitation is a Category B activity and requires application for coverage under the Waiver. We have included a condition for the review of USFS fire suppression guidance and post-fire response during the statewide review of the USFS Water Quality Management Plan (new Waiver condition 5). The Regional Water Board staff have participated in post-fire collaborative efforts to evaluate restoration and rehabilitation measures and will continue that involvement.*

11. Finding 41: 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.

Staff Response: *We do not see a regulatory advantage to having the USFS reports in our files. The Regional Water Board’s regulatory system often requires that documents be generated and filed on site by dischargers; this requirement is in keeping with that approach. They are available to staff and the public upon request.*

12. Finding 42: 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.

Staff Response: *The monitoring and reporting program requires the USFS to perform water quality monitoring that will establish baseline water quality conditions. Protocol must be compatible with the State Wide Ambient Monitoring Program. (Please see response to Quartz Valley Indian Reservation comments 8, 13, 14, and 17.)*

13. Order Item 1: 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.

Staff Response: *See response to comments 4, 6, and 7.*

14. Order Item 2: 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.

Staff Response: *The categorical sections of the Waiver are project driven, meaning that the USFS must apply for coverage of proposed projects and address sites through a watershed restoration plan or separately within the project area. Regional Water Board staff believe this is incentive that will drive the USFS to do more watershed assessments and restoration plans. The Regional Water Board staff will be evaluating the USFS efforts to implement watershed restoration over the life of the Waiver and will be in a better position to assess this assertion at a later time. (Please see response to Quartz Valley Indian Reservation comments 13, 16, and 20.)*

15. Order Item 8: 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.

Staff Response: *As written, the USFS will be required to put specific BMPs in their planning and contract documents. We believe this will ensure a better connection will be made between planning documents and site-specific locations and BMP implementation. The BMPEP monitoring program will be relied on to evaluate the performance of the BMPs. (See also QVIR response 8 and 17.)*

16. Order Item 10: 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.

Staff Response: *We concur. The Waiver has been modified to require the USFS to submit discharge notices to the Regional Water Board within 48 hrs of identification and additional information (see new Waiver condition 36).*

17. Order Item 12: We strongly recommend that these MOUs be included in the waiver as appendices.

Staff Response: *In order to keep the Waiver a manageable size, we do not concur with attaching the MOU and other planning or guidance documents, and instead incorporate them by reference. Placing them in the Waiver gives them no additional regulatory status. The documents are available both from the USFS and the Regional Water Board, both electronically and in hard copy.*

18. Order Item 13: 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.

Staff Response: *Comment responded to several times above. Regional Water Board does not concur with designating all unstable and potentially unstable features as riparian reserves. (See response to comment on Finding 28.)*

19. Order Item 14: 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.

Staff Response: *As a regulatory agency, it is common for Regional Water Board staff to meet with dischargers, such as the USFS in an “agency-only” working meeting. The*

public and interested parties are able to participate in public meetings and workshops and to comment on any decisions pending before the Regional Water Board. We believe there is enough transparency in our process to keep the public informed about what is happening.

20. Order Item 16: We recommend deleting the phrase “**unless Regional Water Board staff agrees in writing to a lesser notice**” from this order.

Staff Response: *This allows flexibility in case of unusual or emergency situation. No change recommended.*

21. Order Item 12: 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

Staff Response: *See response to Finding 32.*

22. Order Item 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.

Staff Response: *The USFS guidelines and framework provides direction to planning to avoid, minimize, and prevent activities such as proposed new construction and reconstruction of roads on and across unstable features, particularly in key watersheds. (See response to comment on Finding 28.)*

23. Order Item 16.b.: 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.

Staff Response: *The Waiver builds on existing USFS framework to prioritize their resources to evaluate the road networks within NFS land. The Regional Water Board does not have the resources to review all the reports that would be generated if this recommendation was adopted.*

24. Order Item 16: Any and all plans relied upon by this waiver ought to be attached to it as appendices.

Staff Response: *The USFS planning documents are voluminous and it is not feasible to attach all planning and guidance documents. Moreover, this would not be consistent with the State Water Board Strategic Plan to save printing resources. The documents are available from the from the USFS and/or the Regional Water Board. The USFS plans on developing a web site with all reference and links to all documents.*

Commenter: Karuk Tribe, Leaf Hillman, Director, Department of Natural Resources

“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.” “The Karuk Tribe has an active DNR [Department of Natural Resources] that works on issues such as fire, fuels reduction, fisheries, water quality, watershed restoration, and cultural resources. The Karuk DNR has spend extensive resources on developing and writing an Eco-Cultural Resources Management Plan (ECRMP). Issues from the ECRMP should be incorporated into the 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.”

Staff Response: *We have included a condition for the review of USFS fire suppression guidance and post-fire response during the statewide review of the USFS Water Quality Management Plan. In addition, the Karuk Tribe may and are encouraged to seek coordination with the USFS outside the context of this Waiver, and pursuant to the Tribe’s ECRMP.*

Commenter: Quartz Valley Indian Reservation

The Quartz Valley Indian Reservation submitted comments on the Waiver on May 17, 2010. The following is the staff response to those comments:

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

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.

Staff Response: *Comment noted; thank you for your support of the approach. We modified the Waiver with several of QVIR's suggestions to improve clarity and specificity as noted below.*

2. 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."

Staff Response: *If a project or activity is deemed ineligible for the waiver, individual WDRs or waiver can be developed. The Waiver contains sufficient guidance and conditions to address unique conditions, and specifically calls out TMDL watersheds and watersheds listed on the Clean Water Act section 303(d) list.*

3. 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.

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)

Staff Response: *Language was added to finding 14 on page 5 paraphrasing those three guidelines. Generally, the proposed Waiver approach is to rely on USFS as the primary land manager and rely on its Guidance, which contains management restrictions in this regard.*

4. In addition, we request 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).

Staff Response: *The concept of limiting disturbance over time and space is an accepted approach to minimizing the likelihood of cumulative watershed impacts. The Waiver requires the USFS to evaluate cumulative impacts in project planning, watershed assessments, and watershed restoration planning. The Forests use various models and criteria, including "thresholds of concern" to alert them to the risk of cumulative impacts. However, the inclusion of specific numeric limits on disturbance requires research and ground-truthing specific to water quality relationships is unnecessary and beyond the capabilities of the Regional Water Board at this time. As the USFS reviews and fine tunes its process for watershed assessments and the use of thresholds of concern, we will keep an eye towards the feasibility of developing numeric limits of the types you propose.*

5. 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

Staff Response: *The MRP section 1.A.2.b. requires road patrols following large storms. The Waiver also requires inventory of existing and potential sediment delivery sites, with annual reporting and review of the priorities. Problem road areas will be included in the inventories. The USFS has a BMP that requires road maintenance for roads within and outside of Timber sales.*

6. ... 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.

Staff Response: *Per the response #5, road patrols are required following large storms. Additionally, the USFS is in the process of developing Travel Management Plans that are intended to survey its roads to determine which to keep as system*

roads and those to decommission. The Regional Water Board has not been actively involved in that process, but will devote staff time to evaluating the process and plans with an eye towards water quality concerns and cumulative impacts.

7. 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.

Staff Response: *We understand the reasoning behind the concept and will discuss this further with the USFS. Self-monitoring is a common approach to verifying implementation and identifying problems for which we have extensive experience. However, a good self-monitoring program requires validation of the monitoring to avoid the “fox watching the hen house” syndrome. We will devote resources to oversee the USFS in the conduct of its operations to review its self-monitoring reports.*

8. The commenter suggests that the landscape level in-channel monitoring proposed in the Waiver will not provide meaningful information due to difficulties in detecting cause and effect relationships. Additionally, the commenter is concerned that proposed reference watersheds would not receive treatments to improve water quality (e.g., road decommissioning). The commenter recommends “...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.”

Staff Response: *While it often is difficult to attribute specific landscape activities with a specific impact, long-term monitoring provides important information on trends in stream conditions that relate to the overall condition of a watershed. We have experience with the usefulness of that type of monitoring in a number of watersheds in the north coast and are supportive of that approach for National Forest System Lands. Additionally, section 2 of the Monitoring and Reporting Program (MRP) for the Waiver addresses project-level monitoring where long-term in-channel monitoring is not occurring.*

A balanced monitoring approach also requires that disturbance activities be monitored. While providing verification that particular practices were used to avoid impacts to water quality (a preventative emphasis), that monitoring also provides information on the effectiveness of the practices, and in the event a change is seen in a trend station, may provide useful information regarding the linkage to on-the-ground activities. The Monitoring and Reporting Program (MRP) for the Waiver requires the USFS to perform both implementation verification and effectiveness monitoring: 1.A.1.-checklist approach to verify 100% implementation of on-the-ground prescriptions; 1.A.2.-BMP effectiveness monitoring; 1.B.1.6.-non-random BMP effectiveness evaluations.

9. 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.

Staff Response: *The Monitoring and Reporting program associated with this Waiver is available to the public for review and comment. If the MRP is revised in the future, we will look into some level of public/agency participation, perhaps posting draft plans on our web site for a comment period.*

10. Findings #4 and 5, Regarding roads and mining: 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.

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. The Waiver should cover control of the discharge of sediment from quarries and rock pits.

Staff Response: *We intend that any activity, whether road related or otherwise, that has the potential to discharge sediment is included in the Waiver, as stated in the preface to the list of activities in finding 4. We have added language to recognize road upgrading and storm proofing to the roads section in finding 4. Too little information was available for the Waiver to address other categories of waste, such as mining, in this iteration of the Waiver; however, as more information is gathered, Regional Board staff will consider adding categories of waste when the Waiver is updated and renewed. Meanwhile, Rock quarries and pits are subject to specific BMPs in the USFS Water Quality Management Plan, and other state regulations.*

11. Finding #4 - Activities (page 2) - Restoration: We recommend adding road storm proofing (upgrading) as an activity under restoration.

Staff Response: *Thank you; we have added that.*

12. 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.

Staff Response: *We have added language to address the proposed language changes. Regarding fire policy, the USFS has guidance and policies with regard to the protection of cultural and environmental resources during fire suppression as well as for salvage logging. The Waiver requires the USFS to apply for coverage for salvage logging as a Category B activity, including environmental documents and analysis of potential impacts. Our staff will review the application and supporting documents to determine eligibility for coverage under the Waiver. If the activities as proposed do not protect water quality, we will require additional measures or request a formal Report of Waste discharge in order to prepare an individual permit or waiver, which is subject to its own separate public process and Board action.*

13. 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.

Staff Response: *Waiver condition 4 requires the USFS to work jointly with the Regional Water Board to resolve issues with prioritization of watersheds. Additionally, the Waiver recognizes Clean Water Act section 303(d) listed waterbodies as “high risk watersheds.” The Waiver also requires annual review of restoration planning; consideration of watershed priorities will occur as part of those reviews.*

14. 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.” 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.

Staff Response: *Forest roads are recognized as a substantial source of sediment in the north coast, and road improvements and reductions in road miles within a watershed are priority issues. The Waiver requires restoration planning, which includes road decommissioning, through the process of review of watershed priorities, review of watershed assessments, and review of watershed restoration plans, Regional Water Board staff and other interested parties will have opportunities to increase the emphasis on reducing impacts from roads, including road mileage within a watershed.*

15. 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.

Staff Response: *We agree with this comment. The USFS restoration planning process and implementation includes protections.*

16. 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: 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.

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

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.

Staff Response: *The reason behind the Waiver conditions to annually review restoration planning is to keep the process of inventory, prioritize, and remediate moving forward and making progress, but with a realistic recognition that resources may vary over time. This is why prioritization of problem areas is important, so that the most important sites are addressed first. The Waiver requirement that if there isn't a restoration plan in a project area, then the USFS must inventory, prioritize, and address problems within that project area is designed to create an incentive to move towards an on-going program of implementation. (Please see response to comments 4, 13, and 14, and KFA/EPIC response 5.)*

17. 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.

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.

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.

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.

Staff Response: *The “findings section” of the Waiver consists of factual statements, not requirements or conditions. The Monitoring and Reporting Program (MRP) that accompanies the Waiver contains more specificity and conditions, although some details regarding the siting of monitoring sites are yet to be decided.*

Regional Water Board staff have reviewed the BMP Evaluation Program and determined that modifications would be appropriate as stated in finding 34 and in the first page of the MRP :

- 34. Additional monitoring is needed to ensure full implementation and to provide a feedback loop to measure the effectiveness of various management practices. There must be monitoring and reporting to demonstrate that the actual on-the-ground prescriptions identified for a particular activity are effective at meeting the goals of the specific BMPs identified to address impacts of specific activities, and to demonstrate that they were implemented and effective.*

The current USFS Best Management Practices Evaluation Program (BMPEP) satisfies some Waiver monitoring elements; however additional monitoring is needed. This includes: focused administrative effectiveness monitoring for moderate risk activities, Category B (see section 1.A.1., below), road patrols after major storms (1.A.2b., below), and in-channel long-term monitoring (1.C., below). For watersheds in which the in-channel long-term monitoring is not conducted, Category B projects will trigger in-channel monitoring at the lowest end of the watershed (2.A. , below), non-random BMP effectiveness monitoring for the project (2.B. , below), and retrospective monitoring of a subsample of BMPs five years post-implementation (2.C. , below).

We have added a sentence to the finding regarding the use of a project checklist approach for the on-the-ground measures. The MRP also contains monitoring in addition to the BMPEP per the above quote from the MRP: checklist approach for on-the-ground prescriptions, non-random BMP effectiveness monitoring, and restrospective monitoring of a subsample of BMPs.

The USFS has an active training program for its employees. In addition, the Regional Water Board has developed a team whose primary purpose is to implement the Waiver by going to each Forest to assist USFS in understanding the details of the Waiver, conduct training in the office and in the field, and be available to address issues with the Waiver process as they may arise.

- 18. 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.”

Staff Response: *I think there is a basic misunderstanding of the finding and the policy it references. The finding is a statement of fact regarding an existing state policy. We have added some language to help clarify, but essentially, State Water Board Order No. 68-16 states that a waterbody with water quality that is better than water quality standards cannot be degraded to the standards without a finding that it is “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” (less than standards). The regional or state water board (depending on jurisdiction) must make that finding based on substantial evidence and after following a full public participation process and public hearing. The proposed Waiver will result in improved water quality, not the degradation of existing high quality.*

19. 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.

Staff Response: *That is correct. This specific condition refers to meeting the water temperature objective for cold water beneficial uses. The USFS Aquatic Conservation Strategy and Aquatic Management Strategy more than adequately address the need for large woody debris recruitment. Additionally, restoration planning includes large wood placement for immediate improvement of in-stream conditions.*

20. 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.

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?

Staff Response: *The inventory, prioritization, and remediation of sites is an on-going process linked to restoration planning and development of individual projects. The Waiver conditions for the USFS to develop inventories and plans, report on restoration planning, meet with Regional Water Board staff, and address sites on individual project areas in watersheds without a restoration plan are all part of the process to address sites on a priority basis and reflect the reality of changing funding. Additionally, the development of plans and keeping them current (annual reviews) places the USFS in a better position to vie for limited grant funding to address problem areas. It is impossible to predict and develop a reasonable time line for completion, since inventories are not available for the entire National Forest System in the North Coast Region. That may be possible in the future, but we do not see that as a realistic expectation at this time.*

21. 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.

Staff Response: *The site inventory process inherently includes sites with a potential to discharge, such as crossings with under-sized culverts.*

22. 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?

Staff Response: *Please see the response to comments 4, 7, and 17. Yes, the Forests are expected to report their own violations, as are all entities under regulation by the Regional Water Board. Failure to do so is a violation in itself. The standards and guidance that the USFS uses is that which the Regional Water Board staff will use, for example, are the on-the-ground prescriptions constructed as designed and operating properly (not eroding), are shade conditions meeting the requirements set forth in condition 1 of the Waiver, are Basin Plan water quality objectives being met.*

23. 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.

Staff Response: *Please see the response to comment 10.*

General Response to requests to add items to lists in the categories: *The lists for the Waiver categories are not all-inclusive, rather are partial lists that serve to provide examples of the types of activities within each category.*

24. 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. 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.

Staff Response: *We added language to clarify the Category A road maintenance activities, and added upgrading and storm-proofing as Category B activities, with qualifications.*

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

Staff Response: *Rock quarries and pits are addressed through the specific BMPs in the USFS Water Quality Management Plan, and state permitting authorities. As additional information is gathered, Regional Board staff intend to propose additional categories of waste, including mining, to be addressed in any Waiver upgrade or renewal.*

26. 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.

Staff Response: *The language as it reads does not exclude those types of projects, However, we added “but not limited to” to the statement.*

27. 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.”

Staff Response: *Those characteristics and activities are adequately covered in the Waiver general conditions and Category B conditions.*

28. 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.

Staff Response: *We are aware of and have addressed that sort of problem in many situations in the past. We will consider current and future access issues in all remediation activities.*

29. 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.

Staff Response: *A condition has been added to the Waiver specifying notification within 48 hours of discovery and a report on the remediation within 14 days of discovery (see new Waiver condition 38).*

30. 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.

Staff Response: *Addressing riparian zone impacts from grazing involves judgment on the characteristics of the riparian zone (including valley form) and geomorphic processes that are not appropriate to detail in a waiver. Guidance for the judgment comes from a variety of sources, including, but not limited to, the USFS Aquatic Conservation Strategy and Aquatic Management Strategy, professional publications, the USFS Water Quality Management Plan, and the Basin Plan.*

31. 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.”

Staff Response: *Those characteristics and activities are adequately covered in the Waiver general conditions and Category B conditions.*

32. 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.”

Staff Response: *Please see response for comment 3.*

33. 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.

Staff Response: *Please see response for comment 17.*

Additional comments on the Monitoring and Reporting Program

QVIR provided extensive comments on the Monitoring and Reporting Program (MRP), which we will use in the fine-tuning as specified in the MRP:

Certain details regarding criteria and methods for decisions about sample site location, numbers of sites, and sample pool selection for retrospective monitoring will be developed, in collaboration with Regional Board staff, prior to initiation of the monitoring program. The USFS shall develop those details with Regional Board staff collaboration prior to initiating monitoring, or by November 30, 2010 at the latest.

We will consider some public participation process for input on those details.

Commenter: Forest Issues Group, Don Rivenes, Stakeholder to the Statewide USFS WQMP review process(Where the commenter refers to order “points”, we assume these to be order findings)

1. Point 2 should mention protection of fish and wildlife

Staff Response: *The beneficial uses of water include fish and wildlife. No change recommended*

2. Point 20 says it does not cover mining discharges and it should.

Staff Response: *Mining discharges, except those called out in Waiver finding 5, are not covered under this Waiver. Too little information was available for the Waiver to address other categories of waste; however, as more information is gathered, Regional Board staff will propose adding categories of waste when the Waiver is updated and renewed. Meanwhile, the WQMP contains several best management practices (BMP) for mining, and additional permits may be required for point source discharges and projects requiring water quality certification under section 401 of the Clean Water Act.*

3. Point 14 does not mention birds and mammals as aquatic resources

Staff Response: *The beneficial uses include those to protect birds and mammals - no change recommended.*

4. Point 14 b refers to Watershed Analysis. FS should indicate what watersheds have gone through such an analysis.

Staff Response: *Finding 14b states “This Waiver requires the USFS to provide a list of watersheds that have undergone a Watershed Analysis and those that have not, with an anticipated date for completion of Watershed Analysis.” That requirement is in Waiver condition 2.*

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.

Staff Response: *Finding 14 is intended to establish Watershed Restoration as a priority – it does not establish a timetable for the USFS to implement. “Reasonable progress” is required and will be determined annually.*

6. Point 16 refers to the MAA as a key agreement, which I believe the SWB said was going away. What replaces it?

Staff Response: *At this time, RB staff cannot predict what will or could replace the MAA. This is one reason why it is necessary to issue a Waiver of WDRs for actions by the USFS that result in non-point source pollution.*

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?

Staff Response: *Within the framework provided, legacy nonpoint sediment sites from past mining activities could be addressed under this waiver.*

For each project that falls under the purview of the waiver, 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.

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?

Staff Response: *All the provisions and conditions including that for monitoring are enforceable under the California Water Code. Enforcement is generally progressive, beginning with informal methods –such as notice of violations, to more formal actions depending on the severity of the violation. The goal of enforcement is to achieve compliance with the permit provisions.*

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?

Staff Response: *The conditions for renewing a waiver are established in Porter Cologne section 13269. The following are some of the relevant sections:*

A waiver may not exceed five years in duration, but may be renewed by the state board or a regional board.

The waiver shall be conditional and may be terminated at any time by the state board or a regional board.

The conditions of the waiver shall include, but need not be limited to, the performance of individual, group, or watershed-based monitoring, except as provided in paragraph (3).

Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver’s conditions.

In establishing monitoring requirements, the regional board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors. Monitoring results shall be made available to the public.

The state board or a regional board may waive the monitoring requirements described in this subdivision for discharges that it determines do not pose a significant threat to water quality.

The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.

Prior to renewing any waiver for a specific type of discharge established under this section, the state board or a regional board shall review the terms of the waiver policy at a public hearing. At the hearing, the state board or a regional board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements.

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?

Staff Response: *Item 1.A.1 of the MRP requires the USFS to develop a BMP: "All projects in Waiver Category B will have administrative implementation monitoring using a "checklist" approach. All on-the-ground prescriptions for the project will be included in the checklist so that the monitoring constitutes 100% implementation monitoring." The USFS has committed to fixing those sites where BMPs were not implemented or ineffective.*

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.)?

Staff Response: *We have included a condition for the review of USFS fire suppression guidance and post-fire response during the statewide review of the USFS Water Quality Management Plan.*

The federal government may deploy Burned Area Emergency Response (BAER) Teams to accomplish similar functions on federally managed lands. Efforts will be made to coordinate assessment and rehabilitation work between local, state, and federal jurisdictions in order to comprehensively address threats to public safety and watershed values.

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)?

Staff Response: *The RB can evaluate the remediation of potential discharge sites as required under the USFS Burned Area Emergency Rehabilitation (BAER) program. The objective of BAER, in part, is to prescribe and implement emergency treatment on federal land to minimize threats to life or property from the effects of a fire and to stabilize and prevent unacceptable degradation to natural or cultural resources. Fire*

fighting and the implementation of the BAER program are conducted pursuant to specific plans and procedures set out in each Forest's Land and Resource Management Plan. A Forest may conduct activities after the BAER activities to address erosion control, reforestation, and riparian improvements.

13. Under orders, point 16, what standards will be used to evaluate the application of pesticides? What about aerial application and penalties for misuse?

Staff Response: *This Waiver does not authorize discharges from the application of herbicides or pesticides. The requirement to obtain notification is to inform the Regional Water Board staff of general use and to assist us in gaining knowledge for the future if it becomes necessary to regulate its use in a particular project. As for standards, General Condition 16 states "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." Unauthorized discharges would be subject to enforcement, which could include imposition of civil liability.*

14. Under Orders, point 20 should cover non-point mining discharges.

Staff Response: *Such discharges are covered under Category B.10: "Nonpoint source activities associated with mining (e.g., roads, pads, cleared areas as described in finding 5. Therefore they are considered a Moderate Risk activity*

15. On page 23 point 1, is the NOI part of the public project notification?

Staff Response: *The Notice of Intent is the application cover sheet for a USFS project. The USFS provides public notice of its projects during a scoping phase and during review periods through a Schedule of Proposed Actions (SOPA) posted on their web site. The Waiver requires that the USFS notify the Regional Water Board when a SOPA is posted.*

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?

Staff Response: *All the provisions and conditions including that for monitoring are enforceable under the California Water Code. Enforcement is generally progressive, beginning with informal methods –such as notice of violations, to more formal actions depending on the severity of the violation. The goal of enforcement is to achieve compliance with the permit provisions.*

A Monitoring and Reporting Program is part of the Waiver and requires in-channel monitoring as well as implementation monitoring for BMPs. Macroinvertebrates are not included in the monitoring due to issues with sensitivity of the methods at this time. Birds and mammals are not included in the monitoring program. Some details are yet to be decided regarding the number and locations of monitoring sites. The Waiver requires that the monitoring plan be fully developed by November 30, 2010 with Regional Water Board staff collaboration or prior to initiating monitoring.

**Commenter: California Cattlemen's Association
California Farm Bureau Federation
California Forestry Association**

The California Cattlemen's Association, California Farm Bureau Federation and California Forestry Association jointly submitted comments on the Waiver on May 18, 2010. The following is the staff response to those comments:

Introductory Comment: 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.

Staff Response: *Pursuant to Section 208 of the Federal Clean Water Act, the Forest Service, in 1979, prepared a document titled Water Quality Management for National Forest System Lands in California (WQMP). The WQMP contains over one hundred State Water Board and USEPA certified best management practice (BMPs) designed to achieve compliance with state water quality objectives. In 1981, the State Water Board and Forest Service entered into a Management Agency Agreement (MAA) to implement the WQMP.*

Since 1981, the MAA/WQMP has served as the framework for protecting water quality on National Forest System Lands in California. This framework has generally worked well; however, there are some areas that need improvement, specifically with the translation of on-the-ground prescriptions to meet BMPs. In addition, over the past 29 years, there have been a number of policy and regulatory changes at both the state and federal level. These include the Clean Water Act section 303(d) listing of waterbodies as impaired, the adoption of Total Maximum Daily Loads (TMDLs) to address impairments, the State's Nonpoint Source Enforcement Policy (NPS Policy), and others. Numerous North Coast streams are listed as impaired for sediment and temperature pursuant to Clean Water Act section 303(d), and the Regional Water Board has the responsibility to implement management measures to meet TMDLs and water quality objectives. The NPS Policy provides that nonpoint source discharges of waste be regulated by waste discharge requirements (WDR), waiver of waste discharge requirements, or prohibition to ensure compliance with regional water board water quality control plans. Finally, new federal programs have been introduced that are designed to protect aquatic resources, for example the Northwest Forest Plan and the Sierra Nevada Framework.

This Waiver relies on the existing MAA/WQMP framework and builds upon it by recognizing and relying on other Forest Service programs, plans, and policies (see Findings 8-18 collectively referred to as "USFS Guidance"). The entire approach in the proposed Waiver is to rely extensively on existing USFS Guidance to provide water quality protection, while meeting Water Board mandates and responsibilities. To

accomplish this, it is necessary to identify features of USFS Guidance that meet Water Board requirements and make those conditions of the Waiver. The proposed Waiver contains three primary substantive components: 1) the maintenance and restoration of Designated Riparian Zones pursuant to the ACS and AMS; 2) the timely implementation of watershed restoration plans that require inventories, prioritization and remediation of pre-existing 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. All three components can be accomplished under the existing USFS structure.

While this approach cannot be implemented through "only one condition" as suggested by the commenters, the Waiver attempts to succinctly identify components of the existing USFS regulatory structure and how its implementation meets water quality statutes and regulation. This enables the Forest Service to come into compliance with, and be recognized for its efforts to meet current state and federal water quality protection regulations for most nonpoint source activities on National Forest System Lands in the North Coast Region.

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.

Staff Response: *The Porter-Cologne Water Quality Control Act (Porter-Cologne) provides broad authority for the State, through the State and Regional Water Boards, to regulate activities and factors which may affect the quality of waters of the state. Through Porter-Cologne, the State and regional boards develop regulation, policy, plans (including Basin Plans), set water quality standards, issue permits and waivers, adopt Total Maximum Daily Loads (TMDLs), and take enforcement actions, all designed to achieve the highest quality water which is reasonable, considering other*

factors. The State and regional boards also implement portions of the federal Clean Water Act that have been delegated to the State. This Waiver has been crafted to meet those regulations, policies, plans, water quality standards, and adopted Total Maximum Daily Loads (TMDLs). In the broadest sense, this Waiver is implementing the requirements of Porter-Cologne, the appropriate portions of the federal Clean Water Act, and those regulations, policies, and plans that have arisen as a result of those Acts.

The proposed Waiver is structured to avoid the commenters' concern with regulatory overlap and conflict. Regional Water Board staff agree that the Forest Service is well suited to manage its lands in a manner which maintains and improves water quality while also providing for the multiple uses. The USFS's planning framework provides a unique opportunity for comprehensive permit coverage that provides better and more efficient protection of the beneficial uses of water by addressing temperature and sediment sources systematically across the landscape. In order to effectuate this goal, the Waiver conditions are necessarily broad because the entire approach is to rely on USFS large land ownership and larger programs. To tap into landscape-level water quality protection, Waiver conditions must track the USFS Guidance, and are appropriate and necessary to comply with Porter-Cologne as they are currently drafted. The commenters' suggestion to narrowly tailor conditions would not allow the Waiver to accomplish its stated goals and would result in more conflict and regulatory overlap, rather than less.

- 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.

Staff Response: *This Waiver does not alter in any way the Forest Service being the agency managing grazing permits and timber contracts on National Forest System Lands. The commenters are correct in stating that "the Forest Service and permittees/contractors are already required to comply with the Clean Water Act and the Porter-Cologne Act." The Regional Water Board has authority to enforce against third-party contractors discharging waste on federal lands; however, the Regional Water Board has generally relied on the USFS to ensure that contractors comply with water quality BMPs. This approach has been successful for timber operations. The proposed Waiver does not alter that arrangement. What has changed is that this proposed Waiver is intended to cover a broader range of activities than the previous Waiver, and*

is structured to provide comprehensive coverage. The independent enforceability of the Waiver is necessary to meet these objectives. The comment that “[s]o, 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 Water Board waiver” is exactly what the Waiver requires. If contractors and permittees follow contract and permit provisions, they will be in compliance.

Previously, grazing on federal land is an activity that has taken place without any regulatory oversight by the Regional Water Board. The proposed Waiver provides a phased approach, with Regional Water Board review primarily when an allotment comes up for renewal after ten years. This will allow staff time to become acquainted with practices. The comment mentions that the Forest Service has a rigorous program, and it is for this reason that staff believe that the current approach will likely fulfill water quality needs, similar to other programs. Again, the Waiver is drafted to link water quality compliance with the existing USFS structure. Staff believe that this mechanism is the least intrusive and most effective approach to handling grazing on federal land, and fits with the comprehensive nature of the proposed Waiver. The alternative would be to address this activity in the region-wide grazing program currently under development.

- 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.

Staff Response: *The proposed Waiver is drafted precisely to recognize the Forest Service as the primary manager of activities on National Forest lands. The term “shall” is commonly used in permits and waivers issued by the State and regional boards to provide enforceability. Enforceable conditions are required for the Regional Water Board to meet its mandates and responsibilities. While the reference to Forest Service “autonomy” is not entirely clear, it should be noted that the Waiver could not and does not alter the authority of the Forest Service in any way. It may at anytime decide that the Waiver is not appropriate, and proceed to seek permitting for individual projects. Its participation in the Waiver is voluntary and presumably to accomplish compliance with water quality statutes and regulations in the most efficient way possible. Waiver conditions requiring collaboration are necessary to ensure that the Waiver continues to serve its desired purpose.*

- 4. Regional Board Regulatory Jurisdiction.** The Regional Board oversteps its 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.

Staff Response: *The Waiver addresses certain nonpoint source activities which may affect the water quality of waters of the state. The USFS manages lands for multiple uses, which include grazing, forestry, recreation, vegetation manipulation, and restoration. Activities associated with these uses are known to generate sediment, affect shade canopy, or influence other water quality parameters of waters of the*

state. The proposed Waiver would cover discharges from nonpoint source activities described in Finding 4 of the proposed Waiver, which have the potential to discharge wastes that affect waters of the state.

It is not clear which provisions of the Waiver the commenters are referring to in reference to regulating land use, hence it is difficult to provide a more specific response to this comment. Note that an activity with no potential to discharge waste does not require coverage under a prohibition, waiver or waste discharge requirements. Certain nonpoint source activities are known to affect water quality through waste discharges. Often one operation alone may have an insignificant contribution; however, nonpoint source land use activities from numerous operations contribute to water quality impairments cumulatively. The proposed Waiver attempts to categorize activities according to level of potential impact to water quality. Activities that have a low potential impact to water quality are eligible for Category A. The Waiver contains a provision for adding items to the list. 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. 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.

Water Code section 13360 does not limit the Water Board from providing a greater level of specificity in a conditional waiver. Often a discharger requests certainty on what BMPs to implement in order to be in compliance and often guidance is needed. Dischargers may always choose to submit a report of waste discharge and receive an individual permit if they find certain Waiver conditions objectionable. Perhaps more importantly, the USFS is unique in that it shares water quality responsibility with the Regional Water Board through the MAA/WQMP. BMPs are specified pursuant to this agreement and plan and therefore are not implicated under Water Code section 13360. As previously explained, USFS's participation in the Waiver is voluntary and presumably for the purpose of attaining water quality compliance in an efficient manner. In addition, the proposed Waiver provides flexibility on the range of prescriptions to implement BMPs on a case-by case basis.

The proposed Waiver does not regulate or restrict the use of pesticides. It requires notification of the use of pesticides, the manner of application, the projected date of application, and the measures that will be employed to assure compliance with the Basin Plan water quality objectives, and is identical to the previous Forest Service Waiver (Order No. R1-2001-0015). The proposed Waiver also requires the Forest Service to submit a copy to the Regional Water Board of any application to the State Water Board for a NPDES permit (Order 2004-0009-DWQ) for the use of aquatic pesticides. This informational requirement for aquatic pesticide use is so we can respond to public complaints or inquiries in an informed manner.

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.

Staff Response: *The proposed Waiver is intended to cover most nonpoint source activities with potential to discharge sediment and temperature waste. It also seeks to cover nutrient discharges for newly enrolled grazing allotments. Too little information was available for the Waiver to address other categories of waste in this iteration of the Waiver; however, as more information is gathered, Regional Board staff will consider adding categories of waste when the Waiver is updated and renewed. One potential category is mining. Meanwhile, the WQMP contains several best management practices (BMP) for protecting water quality from human waste at developed and dispersed recreation. For developed recreation, there are BMPs for locating sanitation facilities. For dispersed recreation, a BMP prohibits placing in, or near a stream, lake, or other water body, substances, which may degrade, water quality. This includes, but is not limited to, human and animal waste. The Forests implement specific measures to meet BMPs. For example, the Forests' often restrict or direct backpackers to camp at least 100 feet from all water sources, and to dispose and bury waste at least 100 feet from all water sources. They also utilize signs, pamphlets, and public contact to encourage the public to conduct their activities in a manner that will not degrade water quality.*

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 AOs (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.

Staff Response: *Covering Forest Service grazing allotments under this Waiver allows the Forest Service to meet the requirements of Porter-Cologne and the NPS Policy. Our intent is to cover allotment management plans (AMPs) as they come up through the 10-year renewal and approval process. During that approval process, the Forest Service will conduct a NEPA analysis. We anticipate reviewing the AMP during the NEPA process and providing comments, as any agency or member of the public is welcomed to do. We have indicated that if the Forest Service desires to seek Waiver coverage for an AMP before the normal 10-year cycle, we will try to accommodate the request, pending available staff resources.*

Under normal situations, we do not anticipate reviewing Annual Operating Plans (AOPs). However, if we become aware of an allotment that is resulting in adverse impacts to water quality, we will engage the Forest Service. Part of that involvement might be reviewing the AOP as a means of mitigating water quality impacts.

Discharges of waste from nonpoint source activities are not subject to citizen suit provisions under the federal Clean Water Act. The Waiver does not impose mandatory minimum penalties on dischargers. Providing coverage of grazing allotments under the Waiver does not increase or decrease anyone's right to file a complaint with the Water Board. Members of the public could previously advocate for fines from Basin Plan violations on National Forest lands, and may still. This is not changed by the Waiver, and the Regional Water Board retains full discretion over enforcement actions. The Regional Water Board uses a progressive enforcement approach, and staff prefers a cooperative approach for nonpoint source implementation; we use the lowest level of enforcement appropriate to the situation, and increase the level of enforcement for recalcitrant dischargers and circumstances that present very serious and immediate threats to water quality.

- 5(2) 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.

Staff Response: *The monitoring program in the Waiver was proposed by the Forest Service. It was designed to recognize many of their existing monitoring programs, to increase the transparency and level of BMP implementation, to help verify the effectiveness of various water quality protection measures and models, and to provide feedback on water quality protection and Waiver compliance.*

- 6(2) 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.

Staff Response: *The vast majority of this Waiver relies on existing Forest Service programs for which they presumably already have in their budget. There may be some*

increased startup costs for some of the new monitoring the Forest Service has proposed, and we are working with them to assure the monitoring is meaningful and achievable within their budgets.