

FACT SHEET

WAIVER OF FILING A REPORT OF WASTE DISCHARGE AND WAIVER OF WASTE DISCHARGE REQUIREMENTS FOR VEGETATION MANAGEMENT ACTIVITIES REGULATED BY THE TAHOE REGIONAL PLANNING AGENCY RESOLUTION R6T-2008-0038

And

MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LAHONTAN REGION AND THE TAHOE REGIONAL PLANNING AGENCY for VEGETATION MANAGEMENT

Introduction

This fact sheet explains the purpose behind each of the numbered paragraphs contained in the two documents referenced above. The intent of the waiver and MOU is to streamline permitting for vegetation management projects in the Lake Tahoe Basin by eliminating the need, in most cases, for project applicants to apply to both the TRPA and the Water Board and to receive permits from both agencies. Neither the waiver nor the MOU eliminate the need for project proponents to apply for and obtain permits from other agencies (e.g., CAL FIRE or a local air district) that may also have jurisdiction over the project.

The MOU is the agreement between TRPA and the Water Board as to each agency's role in regulating vegetation management activities occurring on the California side of the Lake Tahoe basin. Project proponents may rely on the Water Board's adopted waiver as the document that gives them the ability to proceed with their project without separately submitting an application to the Water Board or receiving a permit from the Water Board, provided the project is regulated by the TRPA and does not fall into the very narrow category of projects not subject to the waiver.

There are a few circumstances where a project cannot proceed under this waiver. This could happen:

- If the TRPA requests that the Water Board assumes responsibility for permitting a project (typically due to limited staff or project complexity).
- If an environmental document identified potentially significant impacts that are not mitigated to a less than significant level, either through actions proposed by the project applicant or by permit conditions.
- When the Water Board determines that separate regulation is needed to ensure protection of water quality.

Additionally, as described above, even though the waiver is applicable to a project, the project proponent may need to obtain other approvals. This may occur when:

- A permit or authorization is needed that the TRPA does not have the legal ability to issue. Examples include: Clean Water Act (CWA) section 404 permits, CWA National Pollutant Discharge Elimination System (NPDES) permits, CWA section 401 water quality certifications, local tree preservation requirements, CAL FIRE permits, or a burn permit from an air pollution control district.

Explanations of Numbered Paragraphs in the Waiver

These numbered paragraphs begin on Page 4 of the waiver, and outline the conditions under which the Water Board waives the filing of a report of waste discharge and waste discharge requirements for vegetation management activities within the area of mutual jurisdiction of the TRPA and the Lahontan Water Board is in the public interest when such activities are effectively regulated by the TRPA.

WAIVER AND CONDITIONS

1. This paragraph states that vegetation management activities (defined in paragraph L of the waiver) do not need an application or permit from the Water Board if the activity is regulated by the TRPA.
2. The waiver is limited to those projects that would have a less-than-significant effect on the environment. This paragraph is necessary because the environmental document (Negative Declaration) prepared to support adoption of the proposed MOU and waiver did not analyze projects that may result in significant impacts to the environment. Therefore, projects that would have significant environmental impacts that are not mitigated are not eligible for the MOU.
3. If a component of a project involves discharging dredged or fill material into waters of the United States, including streams and wetlands, a Clean Water Act section 404 permit from the U.S. Army Corps of Engineers may be needed. When a section 404 permit is required, a section 401 water quality certification typically must also be obtained from the Water Board. TRPA does not have the authority to issue Clean Water Act section 401 certifications; therefore, the Water Board must issue this certification if needed. However, because forestry road and skid trail construction are conditionally exempt from section 404 requirements (see 33 Code of Federal Regulations, 323.4(a)(6)(1-xv)), most projects proceeding under the MOU will not need a 404 permit or 401 certification from the Water Board.

Additionally, if a silvicultural operation involves “point source discharges”, an NPDES permit for those discharges would be needed. Silvicultural point source discharges are defined in 40 Code of Federal Regulations section 122.27(b) as *any discernable, confined and discrete conveyance related to rock crushing, gravel washing, log sorting or log storage facilities . . . from which pollutants are discharged into waters of the United States*. These point source discharges are

not covered under the waiver. Nonpoint source discharges associated with vegetation management activities, such as those covered under the waiver, do not require an NPDES permit.

4. This paragraph states the activities proceeding under the waiver must comply with the Lahontan Basin Plan, the TRPA's Regional Plan, and cannot create a pollution or nuisance.
5. This paragraph states the Waiver is conditional. The Executive office can recommend that general WDRs be issued for groups of discharges, or can recommend individual WDRs for an individual project if needed.

Explanations of Numbered Paragraphs in the MOU

These numbered paragraphs begin on Page 3 of the MOU, and outline the conditions by which the Water Board and the TRPA agree to implement permitting of vegetation management activities.

Review and Permitting

1. The intent of the MOU is to eliminate the need for project applicants to obtain water quality permits from both the Water Board and the TRPA. This paragraph establishes that TRPA will be the water quality permitting agency for vegetation management projects. Project applicants in the Lake Tahoe Basin will no longer need to apply to the Water Board for a Timber Waiver under the terms of this MOU.
2. This paragraph is intended to limit the possibility for projects to be delayed because of staff limitations or project complexity. It does not require the TRPA to give permitting responsibility to the Water Board.
3. The first sentence of this paragraph establishes that an exemption to a discharge prohibition is only required from the agency granting the permit. In other words, when a project proponent applies to TRPA and the project requires an exemption from a TRPA discharge prohibition, then TRPA will grant the exemption. The project proponent does not need to also request an exemption from the Water Board from its discharge prohibitions.

The second sentence requires that the agency granting the permit (or approving a project) must make its own findings (or independently certify the findings of a project proponent) and grant any exemptions to its discharge prohibitions. TRPA and the Water Board are agreeing that they will not allow a project proponent to grant itself an exemption to a waste discharge prohibition.

4. This paragraph establishes that inspections and variances are only required from the agency that is reviewing and/or permitting the project.

5. The MOU is limited to those projects that would have a less-than-significant effect on the environment. This paragraph is necessary because the environmental document (Negative Declaration) prepared to support adoption of the proposed MOU and waiver did not analyze projects that may result in significant impacts to the environment. Therefore, projects that would have significant environmental impacts that are not mitigated are not eligible for the MOU.

Any unmitigated impacts identified in an environmental document could be mitigated through additional permit conditions imposed by the TRPA. In that case, the project would be eligible to proceed under the MOU, and the Water Board would not have to issue a separate permit.

Notification and Coordination

6. The intent of this paragraph is to outline the types of activities that may benefit from interagency consultation. This paragraph does not require that the TRPA turn over permitting or review to the Water Board, but provides that the TRPA will notify Water Board staff that a project with one of these listed characteristics is proposed, and may seek advice from the Water Board regarding the project. The permitting of any project by TRPA will not be delayed due to interagency consultation.
7. This is a notification requirement that allows the Water Board to partially fulfill requirements in the California Water Code section 13269. That section of the Water Code requires that monitoring shall be designed to examine the adequacy and effectiveness of the waiver in protecting water quality. It also provides an opportunity to coordinate a response to a violation and provides notification to the Water Board of problems associated with a project that TRPA is permitting pursuant to both the waiver and the MOU.
8. This is a notification requirement that allows the Water Board to partially fulfill requirements in the California Water Code section 13269. That section of the Water Code requires that monitoring shall be designed to examine the adequacy and effectiveness of the waiver in protecting water quality.

Dispute Resolution Procedures

9. This paragraph outlines how TRPA and the Water Board will deal with any disputes on the MOU. It does not apply to a project applicant and any dispute they may have with the permitting agency.

General Provisions

10. This paragraph emphasizes that each agency retains its independent regulatory authority, as required by law.
11. The MOU is between the Water Board and the TRPA. The TRPA and Water Board are agreeing that neither will enter into an MOU with another agency or entity that contradicts the agreements made in this MOU.
12. This paragraph establishes that the Water Board and the TRPA shall communicate regularly.
13. This paragraph requires that at least two persons from each agency are familiar with the MOU, and can address questions or issues on its implementation. It also requires that each agency has enough staff to conduct the activities outlined in the MOU.
14. The MOU is effective immediately upon signature of the Water Board's executive officer and TRPA's executive director, and can be amended upon request. The MOU can be terminated with a 60-day notice by either agency.