

State Water Resources Control Board  
Order No. -----

Waiver of Waste Discharge Requirements for  
Nonpoint Source Discharges Related to  
Certain Activities on National Forest System Lands in California

The State Water Resources Control Board (State Water Board) finds that:

1. The State of California (State) encompasses about 100 million acres. The United States Forest Service (USFS) administers and manages National Forest System (NFS) lands within three USFS Regions, totaling approximately 20 million acres.
  - a. USFS Region 5 (Pacific Southwest Region), manages the following national forests: Mendocino, Six Rivers, Klamath, Shasta/Trinity, Modoc, Plumas, Lassen, Tahoe, Lake Tahoe Basin Management Unit, Eldorado, Stanislaus, Sierra, Sequoia, Inyo, Cleveland, San Bernardino, Angeles, and Los Padres. These forests comprise about 19.2 million acres of the State.
  - b. USFS Region 6 (Pacific Northwest Region) manages the Rogue River-Siskiyou National Forest, accounting for a little less than 100,000 acres immediately south of the Oregon-California border.
  - c. USFS Region 4 (Intermountain Region) manages the Humboldt-Toiyabe National Forest, comprising about 700,000 acres located east of the Sierra Nevada crest and primarily between about Luther Pass on the north and Conway Summit on the south.
2. By statute, USFS must manage NFS lands for multiple uses, including grazing, logging, mining, water supply, recreation, fire control, vegetation manipulation, and restoration. Activities associated with these uses may generate sediment, increase water temperature, and affect other water quality parameters. USFS has existing mandates, programs, funding, and resources for protecting and restoring water quality, riparian areas, wetlands, and watersheds.
3. The USFS' management of multiple land uses over a large portion of the State, coupled with its planning framework and existing programs, provides a unique opportunity for comprehensive permit coverage that provides better and more efficient protection of the beneficial uses of water by addressing several sources of temperature, sediment, and other discharges systematically across the landscape. When appropriately implemented, this can meet the water quality protection needs of the State Water Board and the Regional Water Quality Control Boards ("Regional Water Boards"); together, "Water Boards").
4. This statewide waiver addresses potential nonpoint source (NPS) discharges of waste to waters of the State from certain activities (NPS activities) that take place on NFS lands. Most of the potential impacts are associated with erosion and sediment delivery and/or changes to riparian systems that may reduce shade and affect water temperatures. These NPS activities and their potential water quality impacts are as follows:
  - **Timber Management:** Timber harvesting activity on NFS lands and its associated road network have the potential to generate sediment from equipment use and from erosion of bare ground on roads, landings, and skid trails, and to reduce shade canopy from tree removal due to logging, road construction, and

equipment operations. Refueling and servicing of related equipment can cause discharges of petroleum products and toxic chemicals.

- **Road Management:** There are tens of thousands of miles of roads on NFS lands in California that are managed by USFS. Although most of the road mileage was created when timber production was about an order of magnitude greater than it is today, they now serve the multiple uses USFS is mandated to provide. Forest roads are the single most significant anthropogenic source of sediment on NFS lands. Road location, design, construction or reconstruction, use, maintenance, and decommissioning all pose potential impacts to water quality by increasing soil erosion and compaction, diverting and concentrating surface and subsurface runoff, accelerating mass wasting, and removing vegetative canopy.
- **Range Management:** Grazing by herds of livestock, especially in and near riparian areas, has the potential to cause impacts to water quality. These impacts include discharges of nutrients and pathogens from animal waste, increased heat loading due to reduction of riparian vegetation, and increased sediment loading due to trampling and compaction of stream banks, loss of bank-stabilizing riparian vegetation, and reduction of sediment-trapping instream vegetation.
- **Recreation:** A wide array of dispersed and concentrated recreational activities occurs on NFS lands. The most common water quality impacts from recreational activities are erosion and sedimentation associated with use of roads, trails and camping sites. Much of the recreation takes place in or on water bodies, allowing petroleum products and human wastes to readily enter water.
- **Off-highway Vehicle (OHV) Recreation:** Motorized recreation is the fastest growing use of NFS lands. The increased power and capabilities of OHVs, together with population growth, has greatly increased both the range of and demand for motorized access. OHV recreation is the most rapidly increasing source of sediment discharges on NFS lands.
- **Vegetation Manipulation:** In addition to timber harvesting, the USFS thins vegetation on its lands as part of: 1) fuel management practices (which are intended to reduce the likelihood and severity of wildfire and protect communities at risk); 2) forest rehabilitation activities (selection cuts and thinning addressed as timber harvest); and 3) riparian area rehabilitation to improve diversity and promote conifer species. These activities can generate sediment and alter shade conditions. Use of pesticides can pollute adjacent water bodies.
- **Watershed Restoration:** These activities are generally associated with road decommissioning (addressed above), road upgrades and storm-proofing, remediation of existing and potential sediment discharge sites, instream habitat improvements, and forest rehabilitation.
- **Fire Suppression and Recovery:** These activities may generate sediment and impact riparian areas during and after the fire fighting process, which may include road building, re-opening of old roads, fire line construction, back-burning, and application of fire-retardant chemicals. Immediate remediation of potential discharge sites is required under the USFS Burned Area Emergency

Rehabilitation (BAER) program, whose objective, 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 forest-specific plans and procedures. Following BAER activities, a national forest may conduct further activities to address erosion control, reforestation, and riparian improvements.

This Waiver does not apply to point source discharges that are subject to the NPDES permit program under the Clean Water Act.

5. Both USFS and Water Boards have limited resources to protect water quality, and it behooves both entities to make the process for maintaining, protecting and restoring the quality and beneficial uses of water as efficient and effective as is feasible.
    - a. Regulating discharges from NPS activities under a general waiver rather than WDRs is appropriate because:
      - 1) A general waiver addresses the same or similar discharges of waste from the same or similar operations and applies the same or similar treatment methods and management practices;
      - 2) A general waiver simplifies and streamlines the regulatory process;
      - 3) The covered activities have a only potentially low or moderate impact on water quality; and
      - 4) An effective Water Board program can rely, in part, on the USFS implementation of its existing mandates and programs to protect water quality.
    - b. A statewide waiver is appropriate for the following reasons:
      - 1) USFS administers NFS lands across the entire State and implements its national and regional mandates and directives on a statewide basis, within eight Water Board regions and affecting 11 Water Board offices.
      - 2) Priorities for remediation of legacy<sup>1</sup> problem sites, watershed restoration and monitoring are best established on a statewide basis, without trying to satisfy competing priorities between Regional Water Boards.
      - 3) A single statewide waiver:
        - a) Provides a geographically and temporally consistent platform for USFS administration of NFS lands for water quality, minimizing unnecessary regulatory differences between Regional Water Boards;
        - b) Avoids repetitious renewal of multiple Regional Water Board waivers for both USFS and Water Boards;
        - c) Centralizes and minimizes expenditure of Water Board and USFS staff time on purely administrative work.
- A statewide general waiver frees Regional Water Board and USFS staff to spend more time working together in the field to improve water quality protection.

### **USFS Guidance**

6. NFS lands are managed in accordance with a nested hierarchy of statutes, regulations, plans, manuals and handbooks. These address USFS activities nationally, in multiple and single USFS regions, in multiple and individual national

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<sup>1</sup> Legacy sources or sites are considered those existing discharge or potential discharge areas or sites that are the result of human activity from the past and can reasonably and feasibly be remedied.

forests, and individual projects and activities. These elements are described in this section, and are referred to collectively as “USFS Guidance.” USFS Guidance addresses protection, maintenance, and enhancement of water quality in a reasonable and logical manner at its various spatial scales.

7. Three major sets of statutes and regulations that apply at the national scale have great significance for water quality: a) the National Environmental Protection Act (NEPA), which is the federal analog of the California Environmental Quality Act (CEQA), 2) the USFS Watershed Improvement Program (WIP), and 3) the more recent Travel Management Rule (TMR).
8. NEPA applies to every discretionary decision made by USFS. NEPA requires federal agencies, such as USFS, to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. USFS projects that go through the NEPA process involve substantial public and agency input. The waiver requires that any NEPA analysis of specific projects that USFS wants to be covered by the waiver be submitted to the affected Regional Water Board. The Water Boards use NEPA documentation, or other available information, to determine the applicability of the waiver to any specific project and to determine what specific prescriptions may be needed.
9. Many of the roads managed by USFS are in poor repair, contributing significantly to sediment discharges, and USFS does not have sufficient funding to provide the necessary road maintenance. The 2005 Travel Management Rule (Title 36, Code of Federal Regulations, (36 CFR) Part 212, Subparts A, B, and C)). Subpart A of the TMR mandates that each national forest identify the minimum road system that it needs to carry out its land management responsibilities and to allow appropriate public access to public lands. Under Subpart B, roads that are no longer included in the system will be prioritized for: a) decommissioning (i.e., permanently closed and sometimes obliterated), b) storage (i.e., closed to vehicle access and treated to reduce their impact, but kept available for possible future use) or c) converted to a hiking, equestrian, and/or mountain bike trail) as funding becomes available. Each national forest is also authorized to designate which OHV routes will be available for continued public use. USFS is required to close undesignated roads and routes to any further public use by motorized vehicles. USFS is mandated to retain no more roads or routes than it anticipates having sufficient funding to appropriately maintain during its 5-year funding cycle. The TMR is implemented through Forest Service Manuals (FSM) 2350, 7700, and 7710 and Forest Service Handbook (FSH) 7709.55
10. WIP is a nation-wide USFS program that guides watershed restoration activities progressing through the priority watersheds in a stepwise manner, eventually providing assessment and restoration for all the watersheds. Individual national forests use the WIP to guide watershed-scale assessment and restoration. In accordance with the WIP, each national forest:
  - a. Selects priority watersheds for restoration;
  - b. Assesses watershed condition;
  - c. Inventories watershed improvement needs;
  - d. Identifies essential projects; and
  - e. Develops watershed restoration plans.

These components are important for addressing legacy nonpoint sources, which are often associated with forest roads. Each forest is also responsible for providing an annual report on its WIP accomplishments.

11. The following paragraphs describe the key WIP components in more detail:
  - a. **Priority Watersheds** comprise a system of watershed-scale refugia for protecting fish and water quality. Priority watersheds are the cornerstone for maintaining or recovering habitat for anadromous and resident fish species and threatened or endangered amphibians. National forests must use most of their available restoration funds in priority watersheds. As described in more detail below, priority watersheds receive heightened water quality protection under the multi-region Forest Plans. Water Boards will be encouraged to participate in the prioritization process.
  - b. **Watershed Condition Assessment** is a more detailed look at specific indicators of watershed health. A draft "Implementation Guide for Assessing and Tracking Changes to Watershed Condition" was completed in 2009 and is currently under review.
  - c. **Watershed Improvement Needs Inventory** is an ongoing process that is integrated with each forest's program of work and subject to available funding. The degree of progress in these inventories varies considerably by forests depending on available resources and capabilities. Significant progress is being made in inventories of road-related watershed improvement needs. Transition to a national database is in progress.
  - d. **Essential Projects Identification** establishes the most important projects to be implemented within a watershed (e.g., road crossings, road decommissioning, landslide stabilization) to return it to properly functioning condition. Critical projects, including prevention, restoration, and monitoring, are identified and prioritized, resulting in the development of a watershed restoration plan.
  - e. **Watershed Restoration Plans** structure a comprehensive, long-term program to restore the health of watersheds, aquatic ecosystems and riparian habitats. Restoration addresses legacy and potential sediment delivery sites and riparian area needs, as well as other improvements, such as instream habitat enhancement or improving forest stand conditions. Current restoration emphasis is on controlling and preventing sediment runoff by upgrading and decommissioning roads and restoring damaged riparian meadows. Watershed restoration projects are not limited to priority watersheds.  
This program can make important contributions to the State Water Board's NPS program and toward improving the health of impaired beneficial uses of water.
12. USFS directives set forth in national and regional manuals and handbooks supplement the WIP by providing guidance for watershed-scale planning, restoration, and assessment. These include, but are not limited to, the following:
  - FSM 2520 - provides national direction for watershed condition assessment, watershed improvement, emergency burned area response for wildfires, monitoring, riparian area management, floodplain management and wetland protection, emergency watershed protection, and natural disaster and flood damage surveys. Watershed improvement activities include road decommissioning, meadow restoration, and reforestation of burned areas.
  - FSM 2020 (September 2008) - provides a policy for using ecological restoration in the management of NFS lands, further supporting watershed analysis and restoration.

- Region 5 FSH 2509.22 Soil and Water Conservation Handbook Chapter 20 (July 1988) - provides direction for assessing cumulative watershed effects.
13. Two broad sets of USFS Guidance apply across multiple national forests. The 1994 Northwest Forest Plan (NWFP) applies to NFS lands in Washington, Oregon and northwestern California. The 2004 Sierra Nevada Forest Plan Amendments (SNFPA) applies to California NFS lands in the Cascade Range, Modoc Plateau and Sierra Nevada. The provisions of the NWFP and the SNFPA are not identical, but they have many features in common. Both function within the context of the WIP and the directives discussed above.
14. Important water quality components of the NWFP and SNFPA are as follows:
- a. **Key Watersheds or Critical Aquatic Refuges** - comprise a system of watershed-scale refugia for fish and wildlife that are established under the NWFP or SNFPA, respectively. They are generally included in priority watersheds established under the WIP, and they comprise nearly 40% of NFS lands within the NWFP. These watersheds are managed to maintain or recover habitat for anadromous and resident fish species and have a high priority for restoration and protection of riparian functions. Specific road management guidelines apply to such watersheds: 1) no new roads in roadless areas; 2) no new roads in unroaded portions of roadless areas; and 3) reduction in existing road mileage (no net increase if funding is insufficient to implement reductions).
  - b. **Aquatic Conservation Strategy (ACS) or Aquatic Management Strategy (AMS)** - is the primary mechanism protecting aquatic resources within the NWFP and SNFPA areas, respectively. They set forth similar, but not identical, objectives for maintaining and restoring important water-related features and values.
  - c. **Designated riparian zones**<sup>2</sup> - are a key component of each strategy. They are lands along ephemeral, intermittent, and perennial streams and potentially unstable areas where special standards and guidelines direct land use. They maintain a diverse riparian community that provides resiliency to the system, a buffer area against sediment from upslope activities, and canopy for shade and aquatic nutrition. Designated riparian zones maintain hydrologic, geomorphic and ecological processes that directly affect streams and fish habitats. Widths of the zones can range from a minimum of 100 feet on each side of ephemeral and/or intermittent streams to over 300 feet on each side of perennial fish bearing streams. Only activities that support each strategy's objectives are permissible within with a designated riparian zone.
  - d. **Watershed Analysis or Landscape Analysis** - is another component of each strategy under the NWFP or SNFPA, respectively. These have been required at the 5<sup>th</sup> field watershed scale, and they will soon be required at the 6<sup>th</sup> field watershed scale. Watershed/landscape analysis evaluates the geomorphic and ecological processes operating in a watershed and is intended to enable watershed planning to achieve ACS/AMS objectives. It provides the basis for monitoring and restoration programs. It informs restoration planning efforts through the identification of watershed problems, such as erosional features, problem roads and road sections, and riparian areas not meeting ACS/AMS objectives, as well as identifying those areas that should be preserved from any activities. As of 2010, watershed/landscape analysis has been completed for

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<sup>2</sup> The SNFPA "Riparian Conservation Area." is equivalent to the NWFP "Riparian Reserve". The term "designated riparian zone" is defined and used in this Order to include both the terms.

[REDACTED] of the priority watersheds on NFS lands in California. The waiver requires the USFS to provide an anticipated schedule for completion of all remaining analyses.

15. Each national forest has a Land and Resource Management Plan (LRMP), also known as a “forest plan”. These provide broad guidance for forest management over 10 -15 year periods, as well as standards and guidelines for the forest’s activities and projects. LRMPs determine areas within each forest that are suitable for different resource management activities, including timber harvest, livestock grazing, and recreation, they establish desired conditions for forest resources, and they include plans for wildfire suppression. LRMPs are prepared and analyzed under NEPA. The NWFP and SNFPA control the LRMPs of the individual national forests within their respective geographic areas. Riparian protections and other ACS/AMS components are included in LRMPs for each forest.
16. The four southern California national forests (Los Padres, Angeles, San Bernardino, and Cleveland National Forests) collaborated in developing their LRMPs. They have consistent requirements that are comparable to the NWFP or SNFPA. Although each southern California national forest has its own LRMP, they have all adopted supplements to FSH 2509.22 that provide protection to riparian conservation areas similar to the protection afforded through the NWFP and SNFPA.
17. Individual USFS projects and activities undergo analysis, in part to determine which best management practices (BMPs) should be applied to avoid water quality impacts. On-the-ground prescriptions to implement each BMP are then implemented for each activity. Several documents and processes provide guidance for effective implementation of site-specific, on-the-ground prescriptions, including, but not limited to:
  - USFS Timber Sales Administration Handbook
  - Project-specific design criteria
  - Regional Soils Standards included in the LRMPs provide direction for protecting soil productivity, particularly as it applies to ground disturbance relative to soil compaction and erosion.
  - Wet Weather Operation Standards that address practices that each Forest has to implement to avoid erosion and sedimentation from activities conducted during wet weather.
  - Project implementation mechanisms (e.g., contracts, permits, and other agreements).(USFS has established an on-line library of technical reference documents, both internal and external, to assist its staff and other interested parties in selecting and implementing appropriate site-specific prescriptions for water quality protection.)
18. The foregoing USFS Guidance represents a reasonable and logical approach to addressing water quality protections needed at various scales. The planning framework sets a process for determining and implementing measures not only to mitigate potential water quality impacts, but also to enhance and protect water quality. This Guidance is the institutional context within which the USFS Water Quality Management Plan (WQMP) functions (see following section).
19. The USFS has been conducting a BMP Evaluation Program (BMPEP) for more than two decades. 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. USFS periodically reports BMPEP results to the Water Boards. BMPEP results from 2003-2007 indicated that 86% of BMPs were rated as implemented and that 89% of those were rated effective.

### **USFS Water Quality Management Plan**

20. In 1981, the State Water Board took the following three actions pursuant to Section 208 of the federal Clean Water Act and the implementing U. S. Environmental Protection Agency (USEPA) regulations (which have since been rescinded):
  - a. It certified the USFS document entitled *Water Quality Management for Forest System Lands in California*, including its BMPs, as the USFS WQMP;
  - b. It designated USFS as the management agency with primary responsibility for WQMP implementation; and
  - c. It executed a management agency agreement with USFS.The previous WQMP update was in 2000.
21. The USFS and Water Boards agreed that the 2000 WQMP needed updating for the following reasons:
  - a. Subsequent changes in the Water Boards' regulatory landscape have been substantial. These changes include the following:
    - 1) Amendments to the State's Water Code (WC) mandating that all waivers be formal, conditional, temporary, and include monitoring and authorizing the State Water Board to adopt statewide waivers.
    - 2) Pursuant to the Coastal Zone Act Reauthorization Amendments (CZARA) and related guidance from U.S. Environmental Protection Agency (USEPA), adoption by both the State Water Board and the California Coastal Commission of the *Plan for California's Nonpoint Source Pollution Control Program* (NPS Program Plan) and its companion volume, *California Management Measures for Polluted Runoff*. The NPS Program Plan includes silvicultural management measures that USEPA holds the State accountable for implementing.

- 3) Pursuant to WC amendments, State Water Board adoption of the water quality control policy entitled *Policy for Enforcement and Implementation of the Nonpoint Source Program* (NPS Policy). This policy sets forth “key elements” required of any third-party program for NPS control.
  - 4) Pursuant to the federal CWA: i) the listing of many of the State’s waters flowing from or through NFS lands as being impaired by sediment or temperature; ii) calculation of total maximum daily loads (TMDLs) for many of these waters, and iii) adoption of TMDL implementation plans or other regulatory mechanisms for many of these waters.
  - b. Subsequent improvements in scientific knowledge regarding the condition of forest resources and resulting major changes in USFS guidance, including:
    - 1) The studies related to the 1994 multi-agency NWFP.
    - 2) The 1996 Sierra Nevada Ecosystem Project, which found that the range’s riparian and wetland habitats were among those most severely damaged.
    - 3) The resulting 2004 USFS SNFPA.
    - 4) Pursuant to the State and federal Endangered Species Acts, the listing of most anadromous salmonid populations in the State, as well as several species of forest-dwelling amphibians, as threatened or endangered.
  - c. Subsequent changes in land uses and activities have been substantial. Timber harvesting is much diminished. The frequency and extent of catastrophic wildfire has increased. Fire suppression and fuel treatments are much increased. OHV recreation is the most rapidly increasing cause of water quality impacts on NFS lands in California.
  - d. Knowledge regarding the effectiveness of various BMPs and the processes by which they are administered has improved substantially. Results of the USFS BMPEP have contributed significantly to this added knowledge.
22. The USFS, in collaboration with the Water Boards and stakeholders, has updated its WQMP to reflect these changes. The most significant WQMP amendments include the following:
- a. New and stronger objectives for protecting the quality and beneficial uses of water.
  - b. New and stronger BMPs for new project or activities, including:
    - 1) National forest roads, including their location, design, construction/reconstruction, use, maintenance and decommissioning;
    - 2) Range management;
    - 3) OHV recreation; and
    - 4) Fire suppression, fuels treatment, and vegetative manipulation.
  - c. New and stronger administrative processes for implementing BMPs, turning what are primarily performance standards into specific on-the-ground prescriptions for individual project sites.
  - d. Enhanced program for: 1) remediating discharges from legacy (problem) sites of past activities and 2) contributing toward restoration of impaired beneficial uses in 303(d)-listed waters.
  - e. Expanded water quality monitoring program with important new components needed to:
    - 1) Ensure full WQMP implementation;
    - 2) Provide both short-term and long-term feedback loops to ascertain the effectiveness of the WQMP BMPs and of the actual site-specific on-the-ground prescriptions being used to apply them;

- 3) Determine the trends in watershed and water quality conditions over time;
  - 4) Assist in prioritizing remediation and watershed restoration activities; and
  - 5) Enable adaptive management.
- f. New adaptive management program to iteratively improve effectiveness and implementation of BMPs and other measures to protect water quality.

23. As amended, the updated USFS WQMP:

- a. Implements the relevant management measures set forth in the NPS Program Plan, and conforms to the key elements for a third party program set forth in the NPS Policy.
- b. Increases USFS accountability and transparency, internally and in relation to both the public and the Water Boards.
- c. Will, to a significant degree: 1) better maintain the quality and beneficial uses of water where they are currently in good condition, 2) better protect them where they are threatened, and 3) more effectively contribute toward their restoration where they are impaired.
- d. Has been adopted by USFS as Forest Service Handbook [REDACTED], giving it formal standing as an official USFS directive.

24. Many individual projects and activities on NFS land are conducted by private parties under contracts or permits issued by the USFS. For example:

- a. Private parties bid on timber sales and other projects, and if awarded, enter into a contract with the USFS to perform those activities; or
- b. Private parties apply for and are issued a written permit by the USFS, allowing them to graze their livestock and conduct incidental activities (e.g., camps, water troughs, temporary corrals, herding, livestock loading and unloading) on NFS lands specifically allotted for that purpose.

In these situations, it is critically important that the site-specific prescriptions needed to implement BMPs are carried forward from USFS project-level environmental documents and decisions into the contracts, permits or other documents that will actually control activities at the project site. The updated WQMP substantially strengthens USFS' administrative processes to better ensure this is routinely accomplished.

### **Legal and Regulatory Structure**

25. WC §13240 authorizes the Water Boards to promulgate water quality control plans. Water quality control plans developed by the various Regional Water Boards must be approved by the State Water Board and are commonly called basin plans. A water quality control plan sets forth State- and federally-approved water quality standards.

- a. Each water quality control plan designates the beneficial uses provided by the water bodies within a Water Board region, so the designated beneficial uses differ somewhat between the regions. Pursuant to WC §13050(f), the beneficial uses to be protected include, but are not limited to, the following: domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.
- b. Each basin plan establishes the water quality objectives deemed to be reasonably necessary to protect its designated beneficial uses or to prevent nuisance.
- c. A basin plan may also set forth prohibitions against certain pollutant discharges, implementation plans for achieving water quality standards, and [REDACTED]

- d. The following water quality control plans are applicable to this action:  
1)

26. State Water Board Resolution No. 68-16, "*Statement of Policy with Respect to Maintaining High Quality Waters in California*," (State Antidegradation Policy) requires that any discharge of waste to waters of the state be regulated to achieve the highest water quality consistent with the maximum benefit of the people of the state. Changes in water quality are allowed only if they are consistent with maximum benefit to the people of the State, do not unreasonably affect beneficial uses, and do not result in water quality less than that prescribed in water quality control plans or policies. Resolution 68-16 incorporates and must be implemented consistent with Title 40 Code of Federal Regulations Section 131.12 (Federal Antidegradation Policy) where that policy applies. The water quality control plans incorporate by reference, both the State and Federal Antidegradation Policies.
27. WC § 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, must file with the affected Regional Water Board a report of waste discharge (ROWD) containing such information and data as may be required.
28. Pursuant to WC § 13260, a Water Board prescribes a WDR for actual or potential discharges of waste to the waters of the State, except when it finds, pursuant to WC § 13269 that a waiver of WDRs for a specific type of discharge is in the public interest.
29. WC § 13269 authorizes the State Board or Regional Water Boards to waive the requirements for section 13260 (a) and (c) and section 13263 (a) and section 13264(a) under certain conditions. Section 13269 requires that all waivers be consistent with any applicable state or regional water quality control plan, be in the public interest, not exceed five years in duration, and include monitoring requirements to support the development and implementation of the waiver program, except where the Water Board determines that the discharges do not pose a significant threat to water quality.
30. The State Water Board 2004 *Policy for the Implementation and Enforcement of the Nonpoint Source Pollution Control Program* (NPS Policy) requires that NPS discharges of waste be regulated by WDRs, waiver of WDRs, or prohibitions to ensure compliance with applicable water quality control plans.
31. As of this writing, a number of water bodies that lie within or receive flow from NFS lands have been listed pursuant to CWA Section 303(d) as being impaired by sediment, temperature, or nutrients. The water quality goal for these waters to recover the impaired beneficial uses of water to the degree that the waters can be delisted. Total maximum daily loads have been established for about 21 of these, the great majority of which are in the North Coast Region. TMDL implementation plans have been adopted for [REDACTED] of these waters, and TMDL are being implemented by other means for [REDACTED] others.

32. In its implementation recommendations for three North Coast rivers, USEPA identifies the NWFP standards and guidelines as being potentially sufficient to attain riparian vegetation characteristics (e.g., shade, vegetation diversity) that are consistent with temperature load allocations on USFS lands. Designated Riparian Areas protect surface waters from the effects of timber harvesting. USEPA also cites USFS ongoing efforts for the protection and restoration of refugia watersheds (e.g., South Fork Trinity River) for possible TMDL compliance in certain watersheds.

### **The Statewide Waiver**

33. This waiver is intended to ensure the following:
- a. Discharges related to certain NPS activities on NFS land comply with the following:
    - 1) The WC and related water quality control plans and policies.
    - 2) Requirements implementing the CWA, especially section 303(d).
    - 3) Requirements implementing CZARA, i.e., the NPS Program Plan, and the NPS Policy.
  - b. USFS continues to conduct watershed restoration activities as called for in its Guidance; and
  - c. USFS utilizes all applicable standards, guidelines, and on-the-ground prescriptions necessary to reduce potential impacts to water quality to a level of non-significance.
34. This waiver is based in large part upon the statewide USFS WQMP as it has been collaboratively updated during 2010, and as it may be subsequently collaboratively updated by USFS and the State Water Board.
35. This waiver covers only those NPS activities identified in finding 4: i.e., Timber Management, NFS Roads, Range Management, Recreation, Off-Highway Vehicles, Vegetation Manipulation, Watershed Restoration, Fire Suppression and Recovery.
36. This waiver does not cover any of the following:
- a. Activities subject to any other kind of Water Board permit, including:
    - 1) Construction or industrial stormwater permits;
    - 2) Other NPDES permits, including, but not limited to, silvicultural point sources as defined in 40 CFR 122.27 and any other point sources requiring an NPDES permit;
    - 3) 404 dredge and fill permits or 401 Water Quality Certification;
    - 4) Abandoned mines or mining waste; or
    - 5) Hazardous or human waste.
  - b. Hydropower relicensing.
  - c. Septic tanks or alternative wastewater disposal systems.
  - d. Building construction subject to the Uniform Building Code.
  - e. Permit requirements of any other agency.
37. This waiver also does not cover any specific project that may result in impacts to water quality that cannot be mitigated to less-than-significant levels, even if that project is among the covered NPS activities identified herein.
38. This waiver does not authorize any of the following:

- a. Creation of pollution, contamination or nuisance, as defined by WC §13050;
  - b. Mining discharges, except to the extent that the USFS employs management practices that address sediment and temperature from roads, unvegetated soil, and building pads that are associated with mining activity on NFS land;
  - c. Nonpoint discharges by third parties conducting activities on NFS lands under written authorization of the USFS except as specified in the waiver;
  - d. Discharges of hazardous or human waste;
  - e. Application of herbicides or pesticides;
  - f. Any USFS action that it is not otherwise authorized to take; or
  - g. Any act that results in taking of a threatened or endangered species.
39. It is the intention of State Board that this waiver will supersede application to the covered NPS activities on NFS lands of the following Regional Water Board waivers:
- a. Central Valley Regional Water Board Order R5-2010-0022 and
  - b. Lahontan Regional Water Board Order R6T-2009-0029.
40. It is the intention of State Board that this waiver does not supersede the following:
- a. North Coast Regional Water Board Order R1-2010-0029.
  - b. The authority of an affected Regional Water Board to require a ROWD or issue WDRs for activities not covered by this waiver or for specific projects identified in item 39 above.
  - c. Any more rigorous water-quality-related requirements that are:
    - 1) Established in agreements between any affected Native American tribe and the USFS.
    - 2) Established by a Water Board as necessary to lead to de-listing of water body segments listed as impaired pursuant to CWA section 303(d).
41. This waiver addresses the great environmental variations across the State's NFS lands in three ways:
- a. It reflects the environmental and administrative differences between the major planning regions on NFS lands, i.e. regions covered by the NWFP, the SNFPA, and the southern forests.
  - b. It incorporates those specific conditions that each affected Regional Water Board has recommended as necessary to address environmental conditions within its region.
  - c. The waiver, and the WQMP on which it is based, require that site-specific on-the-ground prescriptions be developed and applied for each project or activity covered by the waiver.
42. This waiver allows:
- a. The State Water Board or its Executive Officer to deny or terminate waiver coverage at any time if it is determined that a project may result in impacts to water quality.
  - b. The USFS and/or the State Water Board to terminate coverage for failure to adequately comply with WQ requirements by any of the following:
    - 1) Individual projects/activities;
    - 2) Classes of projects/activities; and/or
    - 3) Projects/activities implemented by specific national forests.
43. The State Water Board, in collaboration with USFS and affected Regional Water Boards, will reevaluate this waiver no later than five years, when it must be renewed,

and earlier if appropriate. At that time, any necessary adjustments can be considered and incorporated.

44. The waiver includes a schedule of future actions, to be implemented during the five-year life of the waiver.
45. For waters flowing from or through NFS lands and for the NPS activities identified in finding 4, this waiver anticipates that reasonable implementation of the USFS Guidance identified in findings 7 -17, the USFS WQMP and this waiver's conditions, will generally be sufficient to: 1) maintain the existing high quality of water, 2) protect threatened beneficial uses of water, and 3) contribute substantially toward recovery of beneficial uses of water that are already impaired by sediment, temperature, dissolved oxygen and nutrients. "Reasonable implementation" includes application of site-specific on-the-ground prescriptions, remediation of legacy problem sources, other watershed improvement work, and responsible adaptive management.
46. This waiver requires the following four primary substantive components:
  - a. Maintenance and restoration of designated riparian zones pursuant to the ACS and AMS;
  - b. For legacy (i.e., pre-existing anthropogenic) sediment sources, timely implementation of watershed restoration plans that require inventories, prioritization and remediation;
  - c. For new projects and activities, implementation of on-the-ground prescriptions to appropriately adapt and apply the BMPs to the specific site; and
  - d. Monitoring and reporting.
47. As described in finding 14(c), the ACS in the NWFP, and corollary AMS in the SNFPA, apply designated riparian zones to all ephemeral, intermittent, and perennial streams and geologically unstable areas. Designated riparian zones provide shade to meet the water temperature objectives of applicable basin plans; buffer surface waters from discharges of waste associated with upslope activities by trapping sediment; and protect the natural diversity of vegetation that enhances resiliency of the riparian system and the morphology of the stream system. This waiver requires the USFS to protect and maintain designated riparian zones. (See waiver condition 1.) Successful implementation is important for sediment and temperature TMDL compliance.
48. As indicated in findings 11 and 14, the USFS actively addresses legacy nonpoint sediment sources. Active and potential sediment delivery sites are inventoried, prioritized, and scheduled for remediation. This waiver requires that:
  - a. The USFS make those inventories available to affected Regional Water Board staff for review and allow inspection of sites.
  - b. Each forest annually provide a list of its watersheds and prioritization for restoration, and detail the progress made in each watershed.
  - c. If the USFS proposes a project or activity within a watershed that does not have either a watershed restoration plan or an inventory and prioritization of legacy nonpoint sites, the USFS must propose treatments of existing legacy nonpoint sources within the project area as part of the proposed project.USFS will confer with Water Board staff regarding prioritization, legacy site inventories and remediation projects to assist in and verify reasonable progress.

49. This waiver applies to two categories of activities, which are grouped according to level of potential impact to water quality. Activities that have a low potential impact to water quality are eligible for Category A. Category A lists those activities found to meet this classification. Category B applies to activities with a moderate potential impact to water quality and requires the USFS provide more information to the affected Regional Water Board, which will then conduct a more detailed review. In Category B, characteristics of an activity, such as intensity and proximity to surface waters, and the sensitivity of the area, will determine which on-the-ground prescriptions are needed to ensure the activity will have a less-than-significant impact on water quality.
50. As indicated in many findings, activities covered under this waiver must incorporate site-specific on-the-ground prescriptions to implement the WQMP BMPs and do so in a transparent manner. Accordingly, this waiver sets forth:
- a. Conditions that the USFS and its contractors and grazing permittees implement the USFS Guidance and WQMP, including the identification of on-the-ground prescriptions for individual projects or activities;
  - b. A mechanism to ensure their incorporation into contracts, grazing permits and other controlling documents; and
  - c. Monitoring requirements to evaluate their implementation and effectiveness.
51. For the purposes of this waiver:
- a. Those private parties that enter into contracts with the USFS to conduct NPS activities covered under Category B are referred to as “contractors” and the contracts as “contracts”; and
  - b. Those private parties to whom the USFS issues a permit to conduct their NPS activities (particularly grazing of livestock) covered under Category B are referred to as “permittees” and the permits as “permits”.
- In order to be covered by this waiver, contractors and grazing permittees must conduct activities on NFS land in accordance with the contract or grazing permit (specifying on-the-ground prescriptions) and applicable conditions of this waiver. Contractors and grazing permittees are subject to waiver general conditions 12(b), and 14 -16.
52. Pursuant to WC § 13269, this waiver, and any enrollment under this waiver: 1) is conditional; 2) may be terminated at any time; 3) does not permit any illegal activity; 4) does not preclude the need for permits which may be required by other federal, state or local governmental agencies; and 5) does not preclude the State Water Board or an affected Regional Water Board from administering enforcement remedies (including civil liability) pursuant to the Water Code.
53. This waiver, or individual activities enrolled under the waiver, may be re-opened for modifications, revoked and reissued, or terminated.
54. Violations of this waiver are subject to enforcement to the extent allowed by law and in the same manner as enforcement of WDRs.
55. This waiver does not authorize the NPS discharges by third parties conducting activities on NFS lands under written authorization of the USFS except as specified in the waiver.

56. Nothing in this waiver precludes specific agreements made between the USFS and an affected Regional Water Board to develop forest specific BMPs that cover site-specific forest conditions when necessary.
57. This waiver does not affect the right of any person to maintain at any time any appropriate action for relief against a federal agency or a private party conducting operations on federal lands managed by the federal agency.
58. Pursuant to WC § 13267, this waiver incorporates a Monitoring and Reporting Program that allows USFS and Water Boards to assess the waiver's effectiveness at protecting water quality. These requirements are based on the expanded and more rigorous monitoring program set forth in the updated USFS WQMP. They include: 1) a checklist approach for individual activities to ensure full implementation of on-the-ground prescriptions, 2) retrospective monitoring to evaluate the long-term performance of BMPs and attendant on-the-ground prescriptions, and 3) instream monitoring at key sites.

### **Emergency Activities**

59. USFS emergency activities may include wildfire suppression and Burned Area Emergency Rehabilitation (BAER). The USFS has procedures to address fire suppression activities and minimize impacts of the suppression activities on water quality. Each Forest also has conditions and processes in its LRMP to address fire suppression activities, including guidance for fueling equipment, use of fire retardants, and other components of fire suppression.
60. Subject to a notification requirement, WC § 13269, subdivision (c) allows an affected Water Board to waive WDRs for discharges resulting from immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor. These activities and those specific actions necessary to prevent or mitigate an emergency (does not include long-term projects) are exempt from CEQA (California Code of Regulations, title 14 (14 CCR), §15269.) A Water Board has discretion to establish conditions on any such waiver. (WC § 13269 (d)).
61. The USFS is also allowed to waive compliance with NEPA during emergency situations. 36 CFR § 220.4 (b) waives NEPA requirements when a responsible official determines it is necessary to control the immediate impacts of an emergency and actions are urgently needed to mitigate harm to life, property, or important natural or cultural resources. The probable environmental consequences of the emergency action and mitigation of environmental effects are taken into account to the extent practical.
62. This waiver covers discharges from emergency actions defined in 14 CCR § 15269. The waiver requires the USFS to post emergency incidents on its website, and to maintain records for Water Board staff review, as appropriate.

### **Additional Findings**

63. This action meets the requirements of WC section 13269 as follows:

- a. The Order is in the public interest for the reasons stated at finding 5.
- b. The Order is consistent with the all applicable state and regional water quality control plans.
- c. The Order is limited to five years in duration.
- d. The Order is conditioned on implementation of the conditions of the USFS WQMP.
- e. The Order requires monitoring as specified at \_\_\_\_

64. The State Water Board and USFS have reviewed this waiver and the updated WQMP for compliance with both the relevant NPS Program Plan management measures and the NPS Policy's "key elements" that are required of any NPS control program. The USFS Guidance, and updated WQMP satisfy all requirements of these requirements (Attachment xx).

65. State Water Board Resolution No. 68-16 ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires that whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality must be maintained. Any change in the existing high quality is allowed by that policy only if it has been demonstrated to the Regional Water Board that any change will be consistent with maximum benefit to the people of the state, and will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies. The policy further requires that dischargers meet WDRs which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state will be maintained.

This waiver is consistent with Resolution No. 68-16 because overall it will result in a net benefit to water quality by setting forth conditions that implement riparian and shade protections and enhancements, address sediment delivery sites, and implement BMPs and on-the-ground prescriptions for new activities. The activities permitted under this waiver have been determined to have a low potential impact to water quality when conducted pursuant to the terms of the waiver, resulting in compliance with applicable water quality control plans, including applicable water quality objectives. The implementation of BMPs and on-the-ground prescriptions identified for each activity, and the monitoring of their effectiveness, will result in the best practicable treatment or control of the discharge and will assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state is maintained.

66. As lead agency under CEQA, the State Water Board provided notice of intent to adopt a mitigated negative declaration (SCH No. [REDACTED]) for this waiver on [REDACTED]. (14 CCR § 15072.) The mitigated negative declaration reflects the State Water Board's independent judgment and analysis. After considering the document and comments received during the public review process, the State Water Board hereby determines that the proposed project, with mitigation measures, will not have a significant effect on the environment. The documents or other material, which constitute the record, are located at 1001 I Street, [REDACTED], Sacramento, CA 95814. The State Water Board will file a Notice of Determination within five days from the issuance of this order. Mitigation measures necessary to reduce or eliminate significant impacts on the environment, and monitoring and reporting are

incorporated as conditions of approval below.

67. The State Water Board has reviewed the contents of this waiver, its accompanying Initial Study and Negative Declaration, written public comments and testimony provided after notice and hearing, and hereby finds that the adoption of this waiver is consistent with applicable basin plans, and is in the public interest.

THEREFORE, IT IS HEREBY ORDERED that application of Orders R5-2010-0022 and R6T-2009-0029 to NPS activities on NFS lands that are covered by this waiver be rescinded by the Central Valley Regional Water Board and the Lahontan Regional Water Board, respectively;

IT IS HEREBY ORDERED that the provisions of WC § 13260 (a) and (c), and WC § 13264 (a) are hereby waived for discharges from USFS land that result from emergency actions, as defined in 14 CCR §15269. For these discharges, no application procedures are required; however, the USFS shall post emergency incidents on its website to meet the notification requirements under WC § 13269 (c), and maintain records for Water Board staff review, as appropriate; and

IT IS HEREBY ORDERED that pursuant to WC § 13263 (a), §13267, and §13269, the State Water Board waives the requirement to submit a ROWD and the requirement to establish WDRs for discharges of wastes resulting from activities on NFS lands described in finding 4. The following conditions shall apply:

#### Statewide General Conditions

The following general conditions shall apply statewide to all projects and activities in both Category A and Category B:

1. USFS (or each national forest?) shall manage and maintain designated riparian zones (as defined in finding 14(c), see footnote below <sup>3</sup>) to ensure retention of adequate vegetative cover within 300 feet slope distance on each side of fish-bearing streams, 150 feet slope distance on each side of perennial streams, and 100 feet slope distance on each side of ephemeral / intermittent streams, or the site potential tree height distance on each side of the stream, whichever is greatest. Implementation is necessary for sediment and temperature TMDL compliance.

Exceptions to this condition will be considered by the Executive Officer of an affected Regional Water Board. In order for staff of an affected Regional Water Board to determine the adequacy of the justification for an exception, the justification must identify the proposed canopy reduction and expected recovery time, provide an estimate of the pre- and post- project shade or solar impacts, and explain how such an exception will result in a net long-term benefit to water quality and stream temperatures.

2. The USFS (or each national forest?) shall actively address legacy or pre-existing discharges and/or threats to water quality. Sediment delivery sites must be inventoried, prioritized, and scheduled for remediation. Each forest is expected to make reasonable progress towards completing inventories and remediating legacy

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<sup>3</sup> A "designated riparian zone" refers to the Riparian Reserve for those forests under the NWFP and to the Riparian Conservation Areas for those forests under the SNFPA.

- NPS sites. Timely implementation is necessary for sediment and temperature TMDL compliance. Requirements for addressing legacy NPS discharges and/or threats to water quality include:
- a. Within 6 months of adoption of this waiver, each forest shall provide to the Executive Director of the State Water Board and to the Executive Officer of any affected Regional Water Board, for inclusion in Attachment A to this waiver, a list of watersheds, including:
    - 1) The watershed name, code, and other identification;
    - 2) The dates on which the following were completed or is scheduled for completion:
      - a) the watershed assessment; and/or
      - b) the watershed restoration plan (including legacy site identification, prioritization, and scheduling).
  - b. This list shall be updated annually as necessary.
  - c. Water Board staff will:
    - 1) Review the schedule provided from 2.a. above, and the annual updates
    - 2) Confer with the USFS on the priority and progress of inventories and remediation of sites; and
    - 3) Accordingly modify Attachment A on an annual basis.
  - d. The USFS (or each national forest?) shall make legacy site inventories available to staff of any affected Regional Water Board staff for review and allow inspection of sites as needed to assist in prioritization.
3. The USFS shall develop an approved detailed plan for sediment discharges for any waterbodies designated as Outstanding National Resource Waters.
  4. In accordance with the schedule of needed future actions (Attachment xx), the USFS shall, through a statewide collaborative process with the Water Boards:
    - a. Review its guidance for fire suppression and BAER activities specifically regarding protection of water quality;
    - b. Continue to review and refine its WQMP BMPs and the processes by which they are implemented; and
    - c. Make such changes as may be necessary to avoid, minimize, and mitigate impacts of those activities to water quality.
  5. The USFS shall work jointly with Water Board staff to resolve any issues associated with prioritization of watersheds, especially with regard to addressing existing discharge sites and/or instream restoration activities aimed at improving beneficial uses.
  6. The USFS (or each national forest?) shall notify staff of any affected Regional Water Board when the SOPA reports are posted on their web site to inform staff of upcoming activities. If possible, USFS should indicate which projects are likely to be enrolled in Category B.
  7. The USFS (or each national forest?) shall invite staff of any affected Regional Water Board to participate in/attend any USFS Interdisciplinary Team review of any proposed project or activity covered by the USFS WQMP and this waiver.
  8. The USFS (or each national forest?) shall include within the environmental document prepared pursuant to NEPA, contracts, grazing permits, agreements, and other instruments used to direct the activities of contractors, grazing permittees,

USFS personnel, or volunteers, or any other third parties specified in this waiver, the specific on-the-ground prescriptions that are designed to apply and implement the USFS BMPs. The intent is to provide clarity and transparency in how the BMPs will be met and to facilitate the monitoring of BMP implementation (Monitoring and Reporting Program, part 1).

9. CEQA mitigation measures set forth in the accompanying mitigated negative declaration shall constitute enforceable conditions under this Order. These mitigation measures have been incorporated into this Order.
10. All project or activities described in finding 4 that are undertaken by the USFS shall comply with: a) the USFS Guidance and USFS WQMP, b) all applicable mitigation measures identified in the accompanying mitigated negative declaration and incorporated herein, and c) except for condition 12(b) below, all applicable waiver conditions, including specific conditions for projects enrolled under Category B.
11. For any projects or activities described in finding 4 that are undertaken by contractors, grazing permittees, USFS volunteers or any other third parties specified in this waiver:
  - a. The USFS (or each national forest?) shall include in the contract or grazing permit, or other document controlling activities on the ground:
    - 1) The site-specific on-the-ground prescriptions that articulate the USFS Guidance and WQMP, and additional water quality measures identified in the NEPA or other environmental document for the project, and the applicable mitigation measures identified in the accompanying mitigated negative declaration;
    - 2) A copy of this waiver; and
    - 3) A provision stating that the contractor, grazing permittee or other responsible parties are subject to this waiver, specifically general conditions 14 -16.
  - b. Contractors, grazing permittees, USFS volunteers or any other third parties specified in this waiver shall comply with general waiver conditions 14 -16.
12. The USFS maintains exclusive authority to determine whether contractors or grazing permittees are complying with the terms and conditions of the contract or grazing permit.
13. In general conditions 10 and 11 above:
  - a. The reference to the USFS Guidance includes:
    - 1) Following the Wet Weather Operation Standards as developed for each forest, and
    - 2) Minimizing erosion and riparian disturbance from roads, watercourse crossings, road decommissioning, or other activities that have the potential to discharge sediment to or affect heat loading in waterbodies.
  - b. The reference to the USFS Guidance and WQMP includes any modifications to those documents during the life of this waiver, so long as the Executive Director of the State Water Board determines that such modifications are equally or more protective of water quality.
14. Activities conducted under this waiver must comply with all applicable water quality requirements, including water quality standards and prohibitions set forth in applicable water quality control plans adopted or approved by the State Water Board.

15. Discharges of waste not specifically regulated under this waiver are prohibited except in compliance with the Water Code.
16. Activities authorized under this waiver shall not cause a pollution, contamination, or nuisance as defined by WC § 13050.
17. Activities that have potential water quality impacts that cannot be reduced to less than significant levels are not eligible for coverage under this waiver and the USFS will need to submit a ROWD to the affected Regional Water Board and/or obtain authorization from the appropriate agency for a permit not issued by the Regional Water Board.
18. Staff from each national forest shall meet at least annually with staff from each affected Regional Water Board to discuss and rectify any issue with waiver compliance, legacy remediation, watershed restoration, TMDL implementation, monitoring, or any other issues associated with this waiver. The issues and the resolution thereof shall be reported to the State Water Board Executive Officer within 10 days of each annual meeting.
19. USFS shall submit an annual report to the State Water Board Executive Director setting forth the status of any work set forth in the schedule of future actions, a review of the schedule for future actions, and any needed revisions to the existing schedule. The work discussed shall include, but is not limited to, the following: 1) WQMP and/or waiver amendments, 2) legacy problem remediation and/or watershed restoration, 3) monitoring program, and 4) changes needed to address changes in USFS Guidance, funding fluctuations, or unforeseen natural events.
20. The State Water Board Executive Officer, no more than two board members, and the USFS Regional Forester (or designee) shall meet at least annually to review the USFS annual report and to discuss and resolve any issues that have not been satisfactorily resolved by the meetings required by condition 16 above.
21. USFS (or each national forest?) shall obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009-DWQ) for non-timber construction projects on USFS land that disturb one or more acres of soil, or less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. Construction activity subject to this permit includes clearing, grading and disturbances to the ground such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.
22. The USFS (or each national forest?) shall notify staff of any affected Regional Water Board in writing at least 90 days prior to the proposed application of pesticides, unless Regional Water Board staff agrees in writing to a lesser notice. The notification shall include the type of pesticide, method and area of application, projected date of application, and measures that will be employed to assure compliance with an applicable basin plan.

23. The USFS shall submit to staff of any affected Regional Water Board a copy of any application to the State Water Board for a NPDES permit (Order 2004-0009-DWQ) for the use of aquatic pesticides.
24. The USFS may submit information on low risk uses or applications of pesticides (e.g. use around buildings/facilities, borax stump treatment for root disease) for consideration by staff of an affected Regional Water Board to develop a list of activities exempt from the notification in condition 20 above.
25. In the event that unforeseen circumstances resulting from the waiver have the effect of unreasonably constraining USFS activities, the USFS may seek consideration for modifications to the waiver by written request to the State Water Board. Such modifications may include, but are not limited to, removal, for cause, from waiver coverage of any of the following: a) an individual project or activity; b) class of projects or activities; and/or c) one or more national forests.
26. In situations where multiple activities are included as part of an application for coverage under the waiver, USFS (or each national forest?) shall identify it as a Category B activity if any of the activities fall under that category.
27. The USFS (or each national forest?) shall comply with the monitoring and reporting requirements contained in the Monitoring and Reporting Program of this Order. Monitoring and reporting requirements are issued pursuant to WC § 13267 and may be modified from time to time by the Executive Director of the State Water Board.
28. In the event an unauthorized discharge of waste occurs as a result of activities on NFS lands, the USFS shall notify the Executive Officer of the affected Regional Water Board within 48 hours of the discovery of the discharge, providing a brief description of the nature of the discharge, any impacts from the discharge, and remedial actions taken to abate and clean up the discharge. A written report shall follow within 14 days of the notification of discharge.

## A. Waiver Categories

### Category A — Low Risk Activities

This category includes activities that as proposed have a low likelihood of impacts to water quality, and as such, require no additional conditions. Activities in this category include those listed below. The USFS may add additional types of activities to this classification, subject to approval by the State Water Board Executive Director.

1. Christmas tree harvest under individual permits (does not include commercial Christmas tree cutting);
2. Cutting of firewood under individual permits (does not include commercial firewood cutting on federal lands);
3. Hazard tree removal in designated camp sites;
4. Hazard tree removal along roads;
5. Tree planting and revegetation of disturbed areas with no mechanical site preparation;
6. Routine annual road and OHV trail maintenance, such as culvert cleaning and low impact replacement/modification/upgrading outside of designated riparian zones,

- road surface improvements (paving, patching, blading, gravel surfacing), brushing, ditch cleaning and cross drain cleaning;
7. Hand Thinning without assistance from heavy equipment and no risk of discharge;
  8. Minor activities in small areas that are conducted by hand crews;
  9. Activities conducted in compliance with Road Use Permits; and
  10. Dispersed camping, camping in developed recreation sites, use of non-motorized trails, fence building, and similar low-impact, dispersed activities.

Application Procedures: No application is required for activities covered under Category A of this waiver.

Monitoring: The USFS shall keep records of such activities, including any environmental assessments prior to, during, or after the activity, for Water Board staff review, as deemed necessary.

### **Category B — Moderate Risk Activities**

This category includes activities that have Regional Water Board review and additional mitigation. Application for coverage under this waiver is required for such projects. Activities in this category include, but are not limited to:

1. Non-emergency fire restoration and rehabilitation of burned areas.
2. Pre-Commercial thinning in designated riparian zones, or using heavy equipment, or with burning.
3. Vegetation management, particularly prescribed burns, mechanical mastication, and the use of hand crews, adjacent to streams and drainages, or other situations or locations where likelihood of discharge exists.
4. Range management activities.
5. Understory or pile burning.
6. Activities conducted by hand crews in designated riparian zones and that pose a risk of discharge.
7. Road decommissioning.
8. Road upgrading and storm-proofing where there is potential for discharge.
9. Construction of new roads (not subject to state-wide stormwater permit).
10. Motor vehicle trails and their use.
11. NPS activities associated with mining (e.g., roads, pads, cleared areas as described in finding 38(b)).
12. Timber harvest and fuel reduction activities, including forest restoration projects and research and demonstration projects on fuel reduction.
13. Watershed projects, including but not limited to instream restoration projects and legacy NPS remediation.

Certain factors increase the risk of potential water quality impacts and generally fall into four broad categories:

- The activity's proximity to water (e.g. inside a designated riparian zone vs. outside a designated riparian zone);
- The type and size of the activity;
- The severity of disturbance of ground surface, flow patterns and/or vegetation; and
- The on-the-ground conditions where the activity takes place (e.g. steep, erodible or unstable slopes; wetlands; unstable stream banks or channels; floodprone areas).

The Category B conditions below address those factors.

Category B General Conditions

1. The USFS shall conduct an interdisciplinary review of the proposed project or activity, including review by watershed specialists, and identify on-the-ground prescriptions needed to implement the USFS WQMP, and any additional necessary control measures for the proposed activity. The USFS shall clearly indicate within NEPA documents whether any of the following are included within a proposed project:
  - a. Activities within or which could affect:
    - 1) areas with intrinsically high erosion potential;
    - 2) known landslides or unstable areas;
    - 3) unstable banks or channels;
    - 4) floodprone areas;
    - 5) wetlands, or
    - 6) designated riparian zones<sup>4</sup>.
  - b. Activities within or immediately adjacent to a designated riparian zone:
    - 1) construction of new watercourse crossings or reconstruction/modification of existing watercourse crossings;
    - 2) use or reconstruction of existing, or construction or use of new landings or skid trails;
    - 3) equipment operations, except on existing permanent roads or crossings;
    - 4) prescribed fire;
    - 5) pile burning; or
    - 6) road decommissioning.
  - c. Activities outside designated riparian zone:
    - 1) heavy equipment use on slopes over 40% or in any of the areas listed in (a) above;
    - 2) mechanical site preparation and/or prescribed broadcast burning; or
    - 3) forest restoration, including timber harvest and fuel reduction projects involving thinning within outer edges of designated riparian zones which utilize endlining or heavy equipment;
    - 4) instream restoration projects.
2. The USFS (or each national forest??) shall submit a complete application, as described below in the waiver application section.
3. The USFS shall assess watershed conditions and propose and implement restoration activities to address identified water quality concerns in one of the following ways:
  - a. Where the project area, as defined in the project description, of a proposed individual project or activity is within a watershed (or watersheds) for which inventory and prioritization of legacy sites has been initiated as part of a larger

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<sup>4</sup> A designated riparian zone refers to the Riparian Reserve for those forests under the Northwest Forest Plan and Riparian Conservation Areas for that portion of the Modoc NF under the Sierra Nevada Forest Plan.

- watershed planning effort, such a project or activity need not incorporate remediation of legacy sediment sites.
- b. On the other hand, where the above condition is not met, any such project or activity must inventory, prioritize, and schedule for treatments existing legacy sediment sites as part of the proposed project activities.
  - c. Multi-forest, forest-wide, or multi-district activities, such as wildfire reforestation, recreational site improvement, road maintenance, prescribed burns, powerline right-of-way maintenance, and grazing allotments, are exempt from this requirement.
4. Where the proposed activity includes direct or indirect effects to water quality, the USFS (or each national forest??) shall conduct a cumulative watershed effects (CWE) analysis and include specific measures in the proposed activity needed to reduce the potential for CWEs in order to assure compliance with an applicable basin plan. The scale and extent of CWE analyses will be commensurate with the scale and intensity of the projects seeking coverage under this waiver. CWEs analyses will follow guidance in the regional CWE policy, R-5 FSH 2509.22, Soil and Water Conservation Handbook, Amendment 1, and may range from qualitative reasoning to application and interpretation of quantitative models.
  5. The USFS (or each national forest??) shall include the larger planning context (whether in a restoration plan or other document) for specific activities in any request for coverage under this waiver (e.g., how a particular activity or project fits within the watershed priorities developed through the planning process). If the proposed activity is in a watershed for which a watershed restoration plan has not been prepared to conduct inventory, prioritization, and remediation of legacy sediment sites, the USFS shall include within the description of the proposed activity the remediation of any such sites that are within the project area.
  6. The activity must be conducted in accordance with the project description in the accompanying USFS NEPA document, including any project modifications, and the specific on-the-ground prescriptions designed to implement the BMPs identified to avoid any adverse impact(s) to water quality.
  7. The activity shall be monitored, pursuant to the Monitoring and Reporting Program, to assure that all on-the-ground prescriptions are implemented and effective in avoiding any adverse impact(s) to water quality. Should such monitoring indicate that on-the-ground prescriptions were not implemented or that unacceptable impacts occurred, corrective measures to remediate the impact and implement the on-the-ground prescription shall be taken as soon as feasible.
  8. Where management activities and individual projects within designated riparian zones have resulted in burned areas, the USFS (or each national forest??) must prevent, minimize, and mitigate discharges to waters of the state by following the appropriate USFS BMPs and standard erosion control techniques.
  9. Areas where soil has been disturbed by project activities, excluding grazing, within designated riparian zones must be stabilized prior to the beginning of the winter period, prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours, or at the conclusion of operations, whichever is sooner.

10. The USFS (or each national forest??) shall report, within 10 days of discovery, to staff of the affected Regional Water Board, areas within designated riparian zones that are disturbed by grazing that may result in a significant discharge, and any measures taken to prevent, minimize, or mitigate the potential to discharge. Monitoring to verify the effectiveness of the remediation may be required by the Executive Officer of the affected Regional Water Board.
11. Each Forest must ensure that grazing activities are consistent with ACS and AMS goals, the USFS WQMP, and the review of allotments according to the USFS rescission schedule (Attachment B). Except where there is evidence of actual or potential violation of applicable water quality requirements associated with grazing on an allotment, all existing grazing allotments are covered by this waiver, and USFS need not apply for new or continued waiver coverage until the allotment renewal.
12. Prior to the scheduled review of a grazing allotment in accordance with the USFS rescission schedule (Attachment B), USFS (or the national forest??) shall notify the Executive Officer of the affected Regional Water Board and request that staff participates in early review and provide recommendations. Upon completion of the NEPA process and record of decision, USFS (or the national forest??) will submit an application for continued enrollment, along with the required NEPA documentation and record of decision, to the Executive Officer of the affected Regional Water Board. Regional Water Board staff will then review the allotment provisions and site-specific prescriptions for conformance with the conditions of this waiver and applicable water quality requirements. The new (or renewed) grazing allotment will be considered to be enrolled in this waiver unless, within 30 days, the Executive Officer of the affected Regional Water Board officially advises USFS (or the national forest??) in writing of the reasons why it cannot be enrolled.
13. The USFS (or each national forest??) shall make information from inspections and monitoring of conditions on grazing allotments available to staff of an affected Regional Water Board upon request.
14. The USFS (or each national forest??) shall implement the riparian reserve program (and AMS or ACS) and prevent, minimize, and mitigate sediment discharges by following the appropriate BMPs and standard erosion control techniques for activities adjacent to streams and drainages, or other locations or situations where likelihood of discharge exists.
15. The USFS (or each national forest??) will collaborate with staff of an affected Regional Water Board to evaluate research and demonstration activities on fuels reduction projects to ensure plans for those projects include appropriate design features to prevent or limit impacts to water quality and may require
  - a. Additional monitoring as appropriate, such as quantitative monitoring of impacts to soils (compaction, infiltration rate, etc.), ground cover inventories, vegetation recovery, or water quality analysis; and
  - b. Specific environmental triggers or thresholds that must not be exceeded during implementation.

16. The USFS shall minimize new road construction in watersheds designated by the USFS as “Key Watersheds” and in high risk watersheds.<sup>5</sup>
17. The USFS shall conduct, as identified by staff of an affected Regional Water Board, any additional assessments and environmental documentation for new roads associated with timber harvesting activities.
18. For each project or activity for which the USFS has submitted an application, the USFS shall submit a Notice of Completion upon completion of the project or activity, certifying that all the conditions and monitoring and reporting required by this waiver have been met. The enrollment under this waiver will be terminated upon receipt of a Termination of Coverage letter from the Executive Officer, or 30 days after the Notice of Completion has been sent, whichever occurs first.

#### Category B Region-Specific Conditions

1. Conditions Specific to the North Coast Region
  - a. None, this waiver does not supersede the North Coast waiver adopted by Order R1-2010-0029.
2. Conditions Specific to the Central Valley Region
  - a. To be determined
3. Conditions Specific to the Lahontan Region
  - a. To be determined

#### Waiver Application for Category B Activities

1. The USFS (or each national forest??) shall submit a written Notice of Intent (NOI) (Attachment C) and application to an affected Regional Water Board. The NOI certifies USFS’ intent to comply with conditions of this waiver.
2. The NOI shall be signed by a USFS line officer or their authorized representative.
3. The NOI and application shall be filed after project approval by USFS, and at least 30 days prior to anticipated commencement of on-the-ground activities. Certified mail may be used to confirm the delivery date of the NOI and the initiation of the 30-day review period.
4. Subject to general condition 11, if the application is complete, an affected Regional Water Board shall accept or deny in writing within 30 days from its receipt of the NOI. The project will be deemed accepted if the Regional Water Board fails to respond within that time.
5. The Executive Officer of an affected Regional Water Board has the discretion to adjust timeframes at the written request of the USFS.

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<sup>5</sup> High risk watersheds are those watersheds that are at or above thresholds of concern for cumulative watershed effects, as determined by the Equivalent Roaded Area model, or in watersheds with 303(d) listed sediment-impaired waters.

6. To be complete, the waiver application must contain the following information:
- a. A brief description of the proposed activity. Reference to more detailed explanations in supporting documents is sufficient.<sup>6</sup>
  - b. Activity start and end dates; reference to more specific timelines in supporting documents is sufficient.<sup>6</sup>
  - c. The name(s) and contact information for primary project management personnel.
  - d. A description of compliance with the waiver conditions in general terms, with on-the-ground prescriptions set out in the supporting documents being sufficient.<sup>6</sup>
  - e. The proposed project's relation to the watershed restoration plan or other planning document, if one has been prepared, or a description of how the project fits within the basic strategy for watershed improvements if a watershed restoration plan or other such planning document does not exist.
  - f. Identification and proposed treatments of existing legacy NPS sediment sites if an inventory and prioritization of legacy sites has not been initiated in the project area, as described in the project description, (per condition 5) or reference to the legacy site inventory for watersheds with a watershed restoration plan.
  - g. Copies of relevant portions of all environmental documents that set out the details of a project, especially on-the-ground prescriptions, including supporting documents that describe in detail the activities and management practices that will be taken to reduce potential water quality impacts to less than significant levels (e.g., NEPA documents, technical reports, design criteria, assessments, watershed restoration plans).
    - a) The USFS shall clearly indicate within NEPA documents, and provide an index of, the specific on-the-ground prescriptions designed to meet the BMPs to avoid any adverse impact(s) to water quality. Specific on-the-ground prescriptions shall be included in all contracts and grazing permits.

This waiver shall become effective on [REDACTED] and shall expire on [REDACTED], unless renewed by the State Water Board.

Certification:

I, [REDACTED], Executive Director do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the State Water Resources Control Board, on [REDACTED].

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[REDACTED]  
Executive Director

**Attachments:**

- A. List of Watershed Assessments and Watershed Restoration Plans
- B. Summary of USFS guidelines and rescission schedule for grazing allotments
- C. Notice of Intent (NOI) for USFS application and Notice of Completion (NOC)

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<sup>6</sup> Citation to a website or an electronic version of a document is acceptable.

10\_0029\_Waiver\_USFS\_061010\_Adopted

DRAFT