California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2003-0116

Interim Categorical Waiver
for Discharges Related to
Timber Operations
in the
North Coast Region

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

1. California Water Code (CWC) Section 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, shall file with the appropriate regional water board a report of waste discharge containing such information and data as may be required by the Regional Water Board;

2. The Regional Water Board has a statutory obligation to prescribe waste discharge requirements except where the Regional Water Board finds that a waiver of waste discharge requirements for a specific type of discharge is not against the public interest pursuant to CWC Section 13269;

3. CWC Section 13269 provides that any such waiver of waste discharge requirements shall be conditional and may be terminated at any time by the Regional Water Board;

4. The Regional Water Board, in accordance with CWC Section 13269, waived waste discharge requirements for timber operations in 1987 as set forth in Regional Water Board Resolution Nos. 87-113;

5. Recent amendments to CWC Section 13269 (Senate Bill 390) provide that these waivers expire effective January 1, 2003, and that new waivers of waste discharge requirements for specific types of discharges must be renewed every five years;

6. On December 10, 2002, the Regional Water Board, in compliance with CWC Section 13269, reviewed the previously issued categorical waiver for timber operations, determined that it should be eliminated and replaced it with a new categorical waiver and general waste discharge orders;

7. In accordance with CWC Section 13269, the waste discharges for timber operations shall be regulated in the future by waivers, or individual, watershed, watershed segment, or general waste discharge requirements.

8. The State Water Resources Control Board (State Water Board) has designated the United States Department of Agriculture, Forest Service (U.S. Forest Service), as the Water Quality Management Agency for all activities on National Forest Service Lands effective May 26, 1981.

9. The United States Environmental Protection Agency certified the U.S. Forest Service Water Quality Management Plan and practices as "Best Management Practices" in 1981 under section 208 of the Clean Water Act.

10. The State Water Resources Control Board and U.S. Environmental Protection Agency may certify (approve) that the California Forest Practice Rules are Best Management Practices for timber operations on private lands pursuant to Section 208 of the Clean Water Act, at which time timber operations on private lands will be exempt from waste discharge requirements pursuant to Public Resources Code section 4514.3, except as provided for in section 4514.3(b)(1)-(3).

11. This waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in Water Code 13263;

12. Pursuant to CWC Section 13269, the waivers of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration; that this action waiving the issuance of waste discharge requirements for certain specific types of discharges (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Water Board from administering enforcement remedies (including civil penalties) pursuant to the CWC;

13. The Executive Officer or Regional Water Board shall terminate the applicability of the waivers contained herein to any timber operations at any time when such termination is in the public interest and/or the timber operations could affect the quality or beneficial uses of the waters of the state;

14. A waiver of waste discharge requirements for a type of discharge may be superceded by the adoption by the State Water Resources Control Board or Regional Water Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge;

15. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:

    a. Municipal and Domestic Supply (MUN)
    b. Agricultural Supply (AGR)
    c. Industrial Service Supply (IND)
    d. Navigation (NAV)
    e. Water Contact Recreation (REC-1)
    f. Non-contact Water Recreation (REC-2)
    g. Cold Freshwater Habitat (COLD)
    h. Wildlife habitat (WILD)
    i. Rare, Threatened, or Endangered Species (RARE)
    j. Marine Habitat (MAR)
    k. Migration of Aquatic Organisms (MIGR)
    l. Spawning, Reproduction, and/or Early Development (SPWN)

m. Shellfish Harvesting (SHELL)
n. Estuarine Habitat (EST)
o. Aquaculture (AQUA)

16. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were considered as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Order implement these previously developed water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed above.

17. The Regional Water Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) (CEQA), conducted an Initial Study in accordance with Title 14, California Code of Regulations, Section 15063;

18. The Regional Water Board staff prepared a proposed Negative Declaration in accordance with CEQA and the CEQA Guidelines (Title 14, California Code of Regulations, Section 15000 et seq.), and the Negative Declaration concluded that the waiver of waste discharge requirements for timber harvest operations pursuant to Order No. R1-2002-0109 will not have a significant impact on the environment;

19. Copies of the proposed Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA;

20. The Regional Water Board conducted a public hearing on December 10, 2002, in Santa Rosa, California, considered all evidence concerning the matter of and adopted the Negative Declaration, a copy of which is attached hereto, and Order No R1-2002-0109, Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast Region;

21. Order No. R1-2002-0109 expires on December 31, 2003. Order No. R1-2003-0116 provides minor revisions to Order No. R1-2002-0109 including, but not limited to, extending the expiration date to December 31, 2004, requiring the discharger to provide technical reports when directed in writing the by the Executive Officer and requiring the discharger to provide access for Regional Water Board staff to ensure compliance with this waiver.

22. The Regional Water Board evaluated this Order as required by CEQA to determine the need for environmental documentation in addition to the Negative Declaration adopted for Order No. R1-2002-0109. The revisions to Order No. 2002-0109 contained in this Order, pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162, do not require a subsequent negative declaration or environmental impact report unless new significant impacts or substantially more severe significant impacts would result from changes in the project, the circumstances under which the project is undertaken, or other new information. This Order expands the scope of the project analyzed in the Initial Study and Negative Declaration by extending the waiver of WDRs contained in Order No. R1-2002-0109 one year and makes other minor modifications. As explained in the Initial Study and Negative Declaration, the one-year waiver of WDRs for timber operations in

Order No. R1-2002-0109 contained provisions preventing those activities from having a significant effect on the environment. This Order retains the key provisions of Order No. R1-2002-0109 and makes improvements. Accordingly, the extension of the waiver by one year and the addition of the minor improvements in this Order does not represent a substantial modification to the project approved in Order No. R1-2002-0109. No subsequent environmental documentation under CEQA is required.

23. The Regional Water Board conducted a public hearing on November 5, 2003, in Santa Rosa, California and considered all evidence concerning the matter of Order No. R1-2003-0116;

24. The Regional Water Board, based on the testimony received at the aforementioned hearing, and the Negative Declaration determines that the adoption of the interim waiver of waste discharge requirements for timber operations in accordance with this policy will not be against the public interest, and will not have a significant impact on the environment.

25. As provided by CWC Section 13350(a), any person may be liable for civil penalties if that person, in violation of a waiver condition or waste discharge requirements, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance.

26. Effective January 1, 2004, Water Code section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. This monitoring requirement may be waived for discharges that the Regional Board determines do not pose a significant threat to water quality. Discharges that pose a significant threat to water quality are not covered by this waiver.

THEREFORE IT IS HEREBY ORDERED:

A. Timber operations conducted pursuant to the Z'berg-Nejedly Forest Practice Act (Public Resources Code section 4511 et seq.) shall be exempt from waste discharge requirements of CWC Article 4 (commencing with Section 13260) of Chapter 4 of Division 7, except as otherwise specifically provided for in this waiver.

B. At such time as the State Water Resources Control Board and U.S. Environmental Protection Agency certify that the California Forest Practice Rules as Best Management Practices for timber operations on private lands pursuant to section 208 of the Clean Water Act, timber operations on non-federal lands will be exempt from waste discharge requirements pursuant to the Z'berg-Nejedly Forest Practices Act Section 4514.3 except as provided for in section 4514.3(b)(1-3).

C. Silvicultural activities on National Forest System lands, within the boundaries of the Regional Water Board, conducted by the U.S. Forest Service pursuant to the following: (1) "Water Quality Management for National Forest System Lands in California," (2) State Water Resources Control Board (SWRCB)/U.S. Forest Service Management Agency Agreement, (3) U.S. Forest Service Land and Resource Management Plans, (4) decisions in compliance with the National Environmental Policy Act (NEPA), shall be exempt from the

waste discharge requirements of Article 4 (commencing with Section 13260) of Chapter 4 of Division 7, except as otherwise specifically provided for in this waiver.

D. Notwithstanding any other provision, this waiver shall not create a vested right and all such discharges shall be considered a privilege as provided for in CWC Section 13263.

E. This waiver shall be considered revocable any time the Executive Officer or Regional Water Board determines it is in the public interest and/or that a timber operation on non-federal lands or silvicultural activities on federal lands managed by the U.S. Forest Service could affect the quality or beneficial uses of the waters of the state.

F. Subject to the conditions set forth in this Order, the Regional Water Board waives the issuance of waste discharge requirements and submittal of a report of waste discharge for waste discharges associated with timber operations on non-federal lands, except for those activities for which specific waste discharge requirements have been adopted or as set forth in section G, provided that conditions F(1) and F(2) continue in force, and further provided that the discharger complies with conditions F(3) through F(6):

1. The State Water Board continues to certify the "Water Quality Management Plan for Timber Operations on Nonfederal Lands in California," including those California Forest Practices Rules selected by the State Water Board as "Best Management Practices" and continues the designation of the California Board of Forestry and the California Department of Forestry and Fire Protection as the joint management agencies for implementation of the of the Water Quality Management Plan for timber operations on nonfederal lands in California.
2. The California Board of Forestry and the California Department of Forestry and Fire Protection proceed to adopt and implement: (a) a water quality regulatory program consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan); (b) a timber harvest plan verification system, including but not limited to inspection, surveillance, monitoring, and enforcement, acceptable to the Regional Water Board, and (c) a regulatory process sufficient to maintain water quality control plan ("Basin Plan") standards and "Total Maximum Daily Load" prescriptions as from time to time adopted by the Regional Water Board and approved by the State Water Resources Control Board.
3. Timber Operations at all times comply with the requirements of the Regional Water Board Basin Plan, including water quality objectives, prohibitions, TMDL implementation plans, narrative, or other requirements contained in a water quality control plan.
4. The discharger shall comply with any monitoring program and/or provide technical or other reports when directed in writing by the Executive Officer pursuant to California Water Code section 13267. Cooperative monitoring programs from a wide variety of approaches is encouraged.
5. Prior to the commencement of timber operations the discharger shall, in writing, file with the Regional Water Board a Notice of Intent, with a copy of an approved Timber Harvest Plan attached, in which the discharger certifies they understand and intend to comply with all water quality regulations including the provisions of this waiver. The Notice of Intent shall be signed by the owner or an authorized representative.

6. The discharger shall allow Regional Water staff to at reasonable times and with reasonable notice: (1) enter affected property; (2) inspect any facilities, equipment, practices, or operations regulated under this Order; and (3) sample or monitor discharge locations.

G. This waiver shall not apply to timber operations on non-federal lands that the Executive Officer determines meets any of the following criteria:

1. A timber operation that has varied in whole or in any part from the approved timber harvest plan(s), non-industrial management plan, exemption, emergency or other project document that in any way could adversely affect water quality.
2. The Executive Officer has received a request that waste discharge requirements be issued from a California State Agency or subdivision thereof and the Executive Officer agrees with the request.
3. Where conditions unique to the watershed or watershed segment (including but not limited to cumulative impacts, special hydrographic characteristics, or Total Maximum Daily Load standards) warrant further regulation.
4. Any timber operation involving a discharge that could result in less water quality protection than required in water quality control plans approved pursuant to Water Code Section 13245 et seq.
5. Any timber operation not complying with the applicable conditions of this Order.
6. Any timber operation not complying with State and Federal anti-degradation standards (State Water Resource Control Board Resolution 68-16; Title 40 Code of Federal Regulations section 131.12.).
7. Any timber operations that pose a significant threat to water quality.

H. Subject to the conditions set forth in this Order, the Regional Water Board waives the issuance of waste discharge requirements for waste discharges associated with silvicultural activities on federal lands managed by the U.S. Forest Service, except for those activities for which specific waste discharge requirements have been adopted or as set forth in section I, provided that conditions H (1) and H (2) continue in force, and further provided that the discharger complies with conditions H (3) through H(8):

1. The State Water Resources Control Board continues to certify and the U.S. Environmental Protection Agency continues to approve, pursuant to section 208 of the Federal Water Pollution Control Act, the plan entitled "Water Quality Management for National Forest Lands in California" including the Best Management Practices (BMPs) set forth therein and the designation of the U.S. Forest Service as the management agency.
2. The U.S. Forest Service maintains (a) a water quality program consistent with the Basin Plan, and (b) verification system including but not limited to inspection, surveillance, enforcement and monitoring of BMPs and "Total Maximum Daily Load" prescriptions as from time to time adopted by the Regional Water Board and approved by the State Water Board.
3. Silvicultural activities at all times comply with the requirements of the Regional Water Board Basin Plan, including water quality objectives, prohibitions, TMDL implementation plans, narrative, or other requirements contained in a water quality control plan.

4. The U.S. Forest Service complies with any monitoring program and/or provide technical or other reports when directed in writing by the Executive Officer pursuant to California Water Code section 13267. Cooperative monitoring programs from a wide variety of approaches is encouraged.
5. The U.S. Forest ensures that the Regional Water board is informed and has an opportunity to participate in changes to the U.S. Forest Service silvicultural BMPs.
6. For all silvicultural activities conducted under contract, the U.S. Forest Service shall provide written certification to the Regional Water Board that the contract will contain all measures needed to comply with all provisions of this waiver and applicable water quality regulations. These certifications shall be signed by an authorized officer of the U.S. Forest Service prior to commencement of such operations.
7. Prior to commencement of silvicultural activities conducted under contract, the contractor shall in writing file with the Regional Water Board a Notice of Intent, with a copy of the approved contract attached, in which the contractor certifies they understand and intend to comply with all water quality regulations including the provisions of this waiver. The Notice of Intent shall be signed by the owner or authorized representative.
8. For all silvicultural activities conducted by the U.S. Forest Service, written certification to the Regional Water Board from the U.S. Forest Service that the proposed silvicultural activities would comply with all provisions of this waiver and applicable water quality regulations. This certification shall be signed by an authorized officer of the U.S. Forest Service prior to commencement of operations.

I. This waiver shall not apply to timber operations on federal lands managed by the U.S. Forest Service that the Executive Officer or Regional Water Board determines meets the following criteria:

1. Where silvicultural activities have varied in whole or in any part from the approved "Water Quality Management for National Forest Lands in California" and/or "Best Management Practices";
2. Where conditions unique to the watershed or watershed segment (including but not limited to cumulative impacts, special hydrographic characteristics, or Total Maximum Daily Load standards) warrant further regulation. It is understood that ordinarily these issues are considered during project-level NEPA analysis, during which the U.S. Forest Service must ensure that applicable Basin Plan requirements are met and beneficial uses are not affected;
3. Any silvicultural operation involving a discharge that could result in less water quality protection than required in water quality control plans approved pursuant to CWC sections 13245 et seq.; or
4. Any silvicultural operation not complying with the applicable conditions of this waiver.
5. Any timber operation not complying with State and Federal anti-degradation standards (State Water Resource Control Board Resolution 68-16; Title 40 Code of Federal Regulations section 131.12.).
6. Any silvicultural operations that pose a significant threat to water quality.

J. Nothing in this waiver or any ruling, requirement, or policy of the Regional Water Board regarding this waiver shall be a limitation on any city, county, or state agency including but not limited to the State Water Resources Control Board from enforcing and administering

any provisions of law which it is specifically authorized to enforce and administer. Nor shall this waiver affect the right of any person to maintain at any time any appropriate action for relief against any private nuisance or any other private relief. This waiver shall not affect the right of any person to maintain at any time any appropriate action for relief against the U.S. Forest Service or a private party conducting timber operations on federal lands managed by the U.S. Forest Service.

K. This interim Order and the categorical waivers described herein, shall be reviewed and amended as necessary, and shall expire on December 31, 2004.

L. If approved after the date of this Order, timber operations (non-federal lands) or silvicultural activities (federal lands) are ineligible for coverage under Order No. R1-2002-0109.

M. Eligible and compliant timber operations and silvicultural activities covered or proposed for coverage under Order No. R1-2002-0109 are preliminarily enrolled under Order No. R1-2003-0116, unless or until the Executive Officer notifies the operator to the contrary. If coverage under Order No. R1-2003-0116 is not desired, the discharger or authorized representative shall notify the Regional Water Board, in writing, by December 31, 2003.

N. Where waste discharge requirements have been issued by the Regional or State Water Resources Control Board and have not expired, a waiver of that discharge shall not be obtained without a decision by the Regional Board following a public hearing. Thus the Interim Waiver cannot be used to modify any existing order of the Regional Board during the life of the permit.

O. The Regional Water Board hereby adopts Order No. R1-2003-0116.

Certification:

I, Catherine Kuhlman, Executive Officer do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on November 5, 2003.

Catherine Kuhlman

Catherine Kuhlman
Executive Officer