

Regional Water Quality Control Board
North Coast Region

Staff Summary Report
August 15, 2024

ITEM: 4

SUBJECT: Public hearing to consider adoption of proposed General Waste Discharge Requirements for Discharges Related to Certain Land Management Activities on Federal Lands in the North Coast Region, Order No. R1-2024-0012, and Certification of Final Environmental Impact Report for the General Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Land Management Activities on Federal Lands in the North Coast Region, Resolution No. R1-2024-0032. (*Devon Rabellino, Carley Dunleavy, Forest Fortescue, and Jonathan Warmerdam*)

BOARD ACTION: The North Coast Regional Water Quality Control Board (North Coast Water Board) will consider adoption of proposed Order No. R1-2024-0012 (Proposed Federal Lands Permit) and Resolution No. R1-2024-0032 (Certification of Final EIR).

BACKGROUND: The Proposed Federal Lands Permit proposes to regulate certain land management activities on federal lands, primarily from the three largest federal agencies in the North Coast Region, the United States Forest Service (USFS), Bureau of Land Management (BLM), and National Park Service (NPS). Since 2004, the North Coast Water Board has regulated the discharge of nonpoint source pollutants to surface waters on federal lands through three iterations of a Waiver of Waste Discharge Requirements permit:

- Order No. R1-2004-0015: Covered timber harvest activities on USFS lands.
- Order No. R1-2010-0029: Revised to apply to nonpoint source activities such as grazing on USFS lands.
- Order No. R1-2015-0021: Revised to apply to all federal agencies.

On August 20, 2020, the North Coast Water Board adopted the *Waiver of Waste Discharge Requirements for Discharges Related to Certain Federal Land Management Activities on National Forest System Lands in the North Coast Region*, Order No. R1-2020-0021 (Federal Waiver). The Federal Waiver has the same conditions and provisions as the 2015 Waiver.

The existing Federal Waiver applies to federal land management activities such as timber harvesting, livestock grazing, vegetation management, road-related work, fire suppression and recovery, restoration, and recreational facilities management. The Monitoring and Reporting Program (MRP) of the Federal Waiver only applies to the

USFS, and other federal agencies must propose individual project-level monitoring plans.

Federally administered lands cover approximately 46 percent of the land area in the North Coast Region. State water quality regulations apply to federal agencies and activities that occur on federally managed lands. Because the USFS, BLM, and NPS have jurisdiction over their federal lands and facilities and/or engage in activities that may result in the discharge or runoff of pollutants, they are subject to state requirements respecting the control and abatement of water pollution under Clean Water Act section 313.

North Coast Water Board staff developed the Proposed Federal Lands Permit to address lessons learned from implementing the several iterations of the Waiver; changes to the environment, including an increasing annual fire regime; new state and federal policies; and other factors that affect the North Coast Water Board's regulation of federal lands.

DISCUSSION: North Coast Water Board staff are proposing significant changes to the existing Federal Waiver in the Proposed Federal Lands Permit. The proposed changes reflect North Coast Water Board staff's experience implementing the Federal Waiver, as well as input received to date from North Coast Water Board members, federal land management agencies, California Native American Tribes (Tribes), and other organizations and communities of interest in the North Coast Region.

The changes are intended in part to adapt the permit to better accommodate fuels management and fire recovery actions on federal lands, reduce threats to communities from catastrophic wildfires, require monitoring that is consistent with existing federal efforts and that will yield consistent data, and provide a flexible approach to effectively address controllable sediment discharge sources (CSDS) and otherwise improve watershed conditions through a Watershed Assessment and Recovery Program (WARP).

The Proposed Federal Lands Permit and the associated MRP rely on permit conditions, existing federal best management practices, and the standards and guidelines contained in federal agency guidance documents to demonstrate compliance with water quality standards. Key requirements of this proposed Order include the treatment of sediment sources across an Administrative Unit, retention of natural shade within designated riparian zones, and implementation of best management practices designed to prevent and minimize discharges of pollutants to surface waters.

Significant Changes from Federal Waiver

The significant changes included in the Proposed Federal Lands Permit include, but are not limited to, the following:

1. revising the regulatory approach to livestock grazing;

2. revising the in-channel monitoring requirements to better align with federal agency protocols and state monitoring standards; and
3. requiring a new approach to treating CSDS through a treatment credit system (the WARP) across Administrative Units¹.

Watershed Assessment and Recovery Program

The WARP establishes regulatory requirements designed to steadily advance the treatment of CSDS over time. The WARP relies on a performance-based credit system developed for each Administrative Unit and tailored to the specific water quality conditions and land management activities on its respective lands.

Each Administrative Unit would be assigned a credit obligation that must be satisfied annually, with compliance assessed as a five-year average, to address CSDS and accrue treatment credits. The WARP would also provide some limited compliance flexibility through alternative actions that protect or improve water quality, including but not limited to aquatic habitat restoration activities, forest resilience and climate adaptation treatments, and certain monitoring and adaptive management actions. Compliance requirements are intended to be adjusted over time, as treatments are applied, impairment conditions change, and management activities evolve.

Livestock Grazing

The proposed revised approach to regulating grazing would require all grazing activities, regardless of current Federal Waiver enrollment status, to comply with the conditions of the Proposed Federal Lands Permit. The required conditions for grazing would include grazing best management practices contained in Federal Guidance documents, management measures taken from other North Coast Water Board permits, as well as plans and policies that apply to grazing such as the Standards and Guidelines for the Northwest Forest Plan.

On USFS grazing allotments, each National Forest would be required to conduct an evaluation of one allotment annually using the National Best Management Practice Evaluation Protocol and submit the results to the North Coast Water Board in its annual report. If observations of apparent water quality impacts are identified, indicator bacteria monitoring of that allotment may be required to evaluate potential impacts to water quality.

Each National Forest would be required to submit a copy of all approved Annual Operating Instructions (or equivalent) issued on each allotment. Any corrective actions identified in the National Best Management Practices assessments or in North Coast Water Board staff inspection documents would be required to be addressed and incorporated into the following year's Annual Operating Instructions. Each National Forest or federal agency would be required to submit a certification to the North Coast Water Board that all allotments meet Federal Guidance standards and that the federal agency transmitted a copy of the permit and requirements to the grazing permittee.

¹ The term Administrative Unit refers to individual National Forests, BLM Field Offices, and NPS Parks and National Monuments.

In Channel Monitoring

The Proposed Federal Lands Permit and associated MRP proposes to revise the current in-channel monitoring requirements for federal agencies. Federal agencies will be required to submit in-channel monitoring information for their Administrative Units that utilize National River and Stream Assessment (NRSA), Aquatic and Riparian Effectiveness Monitoring Plan (AREMP), or similar monitoring protocols subject to approval by the North Coast Water Board Executive Officer, to continue to provide the North Coast Water Board with information about in-channel conditions across federal lands.

Public Comments

The draft Federal Lands Permit and draft EIR were circulated, including being posted on the North Coast Water Board's Forest Activities on Federal Lands webpage, for a 45-day public review period from March 22 to May 7, 2024. North Coast Water Board staff held a workshop during the April 4, 2024, North Coast Water Board meeting to inform and invite comments from North Coast Water Board members, organizations and communities of interest, and the public on the draft Federal Lands Permit and draft EIR.

Oral Comments

An Environmental Protection Information Center representative provided an oral comment during the April 4, 2024, workshop. The representative expressed concern regarding the pace and scale of legacy sediment site treatments on USFS lands and inquired about how the draft Federal Lands Permit will require treatment of those sites. A USFS representative expressed general support for the Order and the collaboration with North Coast Water Board staff, emphasized the need for partnerships to accomplish shared goals, and raised concerns relating to funding and resources.

Written Comments

The North Coast Water Board received 30 comment letters on the draft Federal Lands Permit and draft EIR during the public review period. Written comments and North Coast Water Board staff's responses to written comments are included in the attached *Response to Written Comments* document. North Coast Water Board staff organized comments into the following categories:

- Category A and B Activities
- Draft Environmental Impact Report
- Editorial
- Emergencies
- Engagement and Outreach
- Federal Agency Resource Limitations
- General Water Quality Concerns
- Grazing
- Monitoring
- Reporting

- Support
- Watershed Assessment and Recovery Program
- Water Board Authority

North Coast Water Board staff considered written and oral comments from the public review period and revised the Federal Lands Permit accordingly. Noteworthy revisions include the following: (1) transition of “Cultural burning, understory burning, and pile burning” activities from Category B to Category A (Attachment A); (2) addition of the “Racial Equity and Environmental Justice-Focused Projects” WARP credit multiplier (Attachment F); (3) minor increase in WARP credit value for watercourse crossing upgrades (Attachment F); and (4) revised number of required USFS Grazing Allotment Condition Evaluations from four allotments to twenty percent of active allotments, up to a maximum of four allotments (Attachment C). Other changes include minor clarifications and corrections to the Federal Lands Permit and/or EIR. North Coast Water Board staff also made several changes to the draft Federal Lands Permit that were informed by staff professional judgment or which corrected errors mistakenly included in the draft circulated for public review. The changes do not result in any new significant impacts to the environment, nor do the changes result in a substantial increase in the severity of an environmental impact. All changes are detailed in the *Response to Written Comments* document.

OUTREACH AND ENGAGEMENT: Since 2019, North Coast Water Board staff have actively engaged with federal agencies, tribal governments, environmental groups, and other interested persons to inform the content of the Federal Lands Permit. This includes, but is not limited to, the following actions:

- nine meetings with federal agency staff and management across Administrative Units;
- numerous informal, staff-level conversations between federal agency and North Coast Water Board staff;
- tribal consultations with six Tribes;
- three meetings with environmental groups;
- two public meetings during a 30-day scoping period to inform the draft EIR;
- five updates on permit development through Executive Officer Reports;
- two informational items in front of the North Coast Water Board; and
- release of an Administrative Draft of the Federal Lands Permit to federal agencies and Tribes in 2023.

Please email RB1-Federal@waterboards.ca.gov to receive a detailed summary of engagement and outreach conducted by North Coast Water Board staff from 2019 to 2024.

RECOMMENDATION: Adopt Order No. R1-2024-0012 and Resolution No. R1-2024-0032, as proposed.

SUPPORTING DOCUMENTS:

1. Proposed Order No. R1-2024-0012
 - a. Attachment A – Category A Activities
 - b. Attachment B – Category B Activities
 - c. Attachment C – Monitoring and Reporting Program No. R1-2024-0012
 - d. Attachment C1 – Supplemental MRP Findings
 - e. Attachment C2 – WARP Tracking Form
 - f. Attachment D – Notice of Intent
 - g. Attachment E – Notice of Termination
 - h. Attachment F – Watershed Assessment and Recovery Program No. R1-2024-0012
 - i. Attachment F1 – Watershed Assessment and Recovery Program Technical Analysis
 - j. Attachment G – Supplemental Order Findings
 - k. Attachment H – Glossary of Terms and Acronyms
2. Notice of Public Hearing
3. Public Comments (available electronically)²
4. Response to Written Comments on Draft Federal Lands Permit and Draft EIR
5. Proposed Resolution No. R1-2024-0032, Certification of Final EIR for Proposed Order
6. FEIR

² Please contact RB1-Federal@waterboards.ca.gov to receive copies of written comment letters on the Draft Federal Lands Permit submitted to the North Coast Water Board during the public review period.