

September 16, 2024

**VIA ELECTRONIC MAIL
AND FIRST CLASS MAIL**

State Water Resources Control Board
Office of Chief Counsel
Adrianna M. Jerome
1001 I Street, 22 Floor
Sacramento, CA 95814

Re: In the Matter of Petition for Review by the United States Forest Service and Bureau of Land Management of General Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Land Management Activities on Federal Lands in the North Coast Region (Order No. R1-2024-0012)

Dear Ms. Jerome,

On behalf of the United States Forest Service and Bureau of Land Management (collectively “Federal Agencies”), enclosed please find a Petition for Review and Request for a Hearing of the above-referenced General Waste Discharge Requirement Order issued by the Regional Water Quality Control Board, North Coast Region, on August 15, 2024. The Federal Agencies further request that the Order be stayed pending the review and determination of this petition.

Please do not hesitate to reach out should you have any questions.

Sincerely,



Matthew Gerlomes
U.S. Department of Agriculture Office of the General Counsel

Kathryn Brinton,
U.S. Department of the Interior Office of the Regional Solicitor

JOHN EICHHORST
Regional Attorney
MATTHEW GERLOMES
JOSHUA RIDER
ALEJANDRO CHAVEZ
Attorney-Advisor
U.S. Department of Agriculture
Office of the General Counsel
630 Sansome St., Suite 1040
San Francisco, CA 94111
Telephone: (209) 981-7448
Matthew.gerlomes@usda.gov

LANCE WENGER
Regional Solicitor
KATHRYN BRINTON
Attorney-Advisor
U.S. Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825
Telephone: (916) 978-5612
Facsimile: (916) 978-5694
kathryn.brinton@sol.doi.gov
Attorneys for the Bureau of Land Management

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

NORTH COAST REGION

In the Matter of General Waste Discharge
Requirements Order No. R1-2024-0012

**PETITION FOR REVIEW AND
REQUEST FOR HEARING**

The United States Forest Service and Bureau of Land Management (“Petitioners” or “Federal Agencies”) hereby file this petition for review and request for a hearing by the State Water Resources Control Board (“State Board”) of the above-referenced “General Waste Discharge Requirements for Federal Lands in the North Coast Region”, Order No. R1-2024-0012 (“the Order”), issued by the Executive Officer of the California Regional Water Quality Control Board, North Coast Region (“Regional Board”) on August 15, 2024. This petition for review is filed pursuant to the United States Constitution, the California Constitution, Water Code § 13320 and 23 C.C.R. §§ 2050 et. seq. A copy of the Order can be found at the following link: [Federal Lands Permit Order \(ca.gov\)](#).

Petitioners are also submitting a request to the State Board to stay this Order pending the review and determination of this petition.

I. Name and Address of Petitioner

Petitioners are the United States Forest Service and Bureau of Land Management. Petitioners may be contacted via the information provided below or through their counsel of record.

Jennifer Eberlien
Regional Forester, Pacific Southwest Region USFS
1323 Club Drive
Vallejo, CA 94592

Joseph Stout, State Director
BLM California
2800 Cottage Way, Suite W1623
Sacramento, CA 95825

II. The Regional Board Action for Which This Petition for Review is Sought

The Regional Board action for which this petition is filed is the issuance of a General Waste Discharge Requirements Order No. R1-2024-0012, dated August 15, 2024.

III. The Date the Regional Board Acted

The date of the Regional Board's action subject to review is August 15, 2024.

IV. Statement of the Reasons the Action is Inappropriate and Improper

Several issues raised in this petition were presented to the Regional Board during the public comment period and in prior scoping meetings. The issuance of the Order was beyond the authority of the Regional Board, inappropriate, or improper for the following reasons:

- A. The Regional Board's General Waste Discharge Requirements Order establishes several requirements and guidelines that differ significantly from other regional waste discharge orders and Waivers of waste discharge that are being simultaneously promulgated. Many National Forests, BLM Field Offices, and individual federal projects are intersected by more than one water board jurisdiction. This creates a complicated and often infeasible challenge for the Federal Agencies to adhere to multiple and inconsistent permitting processes for a single Administrative Unit or individual project.
- B. The Watershed Assessment and Recovery Program ("WARP") presents region-wide treatment quotas (described as "credits") for individual administrative units that exceeds Federal funding and staffing. When combined with other regional water boards requiring separate treatment programs (ex: pending Central Valley Waste Discharge Order), the cumulative effect will result in persistent non-compliance until such time as available funding and staffing can be provided. The WARP quotas instigate competing funding and staffing priorities among other water boards' jurisdictions with similar requirements for land management actions.
- C. The Federal Agencies' burden to comply with contradictory order requirements imposes significant barriers to the Federal Agencies' mission of watershed health and wildfire response. Compliance with the different requirements from several regional orders and waivers will impede the pace and scale of critical landscape health treatments necessary to combat wildfires and protect public safety. The WARP program described above prioritizes roads treatments over other land management priorities such as addressing the wildfire crisis. The Federal Agencies do not disagree with the need to treat roads and will continue to do so, however, current Federal Agency policy is directed at addressing the wildfire crisis and available resources do

not allow for the simultaneous prioritization of roads treatments, addressing wildfire concerns and aquatic restoration.

The WARP will require the Federal Agencies to repurpose limited funds, resources, and personnel away from wildfire mitigation efforts contradicting national and state priorities. The WARP prioritizes roads treatments and the quota system is designed around this. However, in California, wildfires pose a significant danger to public safety, natural resources, as well as water quality. The 2018 review of the Northwest Forest Plan (“Synthesis of science to inform land management within the Northwest Forest Plan area.”), which includes much of the landscape covered by the Order showed that overall improvements in stream condition indices were tempered by large wildfires. Catastrophic, high-intensity wildfire has the potential to cause far greater negative effects on water quality than the localized site-specific issues the WARP is intended to address. The Federal Agencies will continue to allocate resources to watershed restoration activities, but doing so to the extent the Order requires frustrates the overall purpose of the Order given the magnitude of negative effects wildfires inflict on the watershed. Again, the Federal Agencies do not disagree with the need to treat roads; however, the Order implies that Federal Agencies should prioritize roads treatments above other land management actions in order to receive maximum credits.

- D. The development of region-wide temperature monitoring protocols and periodic reporting for in-stream monitoring will require redirecting significant interdisciplinary staff time and resources to an effort with no indication that the data will be used to inform the 303(d) impairment status. Moreover, the Order fails to recognize improvements in stream condition indices across Federal lands reflecting long-standing watershed restoration efforts as discussed in the 2018 Northwest Forest Plan “Synthesis of science to inform land management within the Northwest Forest Plan area.” This report notes small increases in stream condition indices, including temperature under current Northwest Forest Plan directives. Of note in the 2018 synthesis report is that decreases in stream condition indices were associated with large wildfires. While the response to comments acknowledged the ongoing monitoring programs associated with the Northwest Forest Plan, the adopted order still requires individual administrative units to analyze and submit data with no established feedback mechanism for assessing impairment status, particularly for mixed-ownership watersheds.
- E. Collectively, the adopted Order requires up to 15 individual monitoring and reporting tasks per administrative unit that will exceed staff capacity. When combined with separate and inconsistent requirements from other regional boards that bisect individual administrative units, the program becomes overly complex and a waste of valuable federal agency time and resources.
- F. The Order requires compliance with CEQA monitoring protocols. The Federal Agencies reject this requirement because many of the state-listed species are already incorporated in the Federal Agencies’ sensitive species data sheets and managed accordingly.
- G. The cumulative effects of the above-mentioned concerns from the Federal Agencies presents significant challenges for the compliance, implementation, and effectiveness of the Order.

V. Petitioner is Aggrieved

Petitioner is aggrieved for the reasons set forth in paragraph IV above. Additionally, Petitioners specifically set forth six points of grievance with the Order.

- 1) **The WARP dictates Federal lands management policy by prioritizing roads issues above addressing other critical land management actions such as allocating limited funds to public health and safety projects, and addressing ongoing wildfire issues in California. Collectively, and in combination with**

pending requirements from other Regional Water Boards, the WARP requires redirecting funds in conflict with existing federal priorities.

The Federal Agencies will be required to analyze, report and treat on targets that are not achievable with annual government funding. On their own, these quotas are unattainable; when combined with pending quotas from the Central Valley Board, these quotas are untenable. The Federal Anti-Deficiency Act prohibits obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by agency regulation. 31 U.S.C. § 1517(a).

Given the Order’s focus on roads treatments, Table 1 shows estimated annual expenditures to attain quotas based on roads upgrading alone. The WARP provides for alternative credits, but these are all minor components when compared with the credits earned from roads treatments. Table 2 Further elaborates on WARP treatments and ongoing efforts. Collectively, these tables demonstrate the funding levels required to meet priority WARP elements (Table 1) and the current pace of Federal actions relative to the WARP quotas (Table 2).

Table 1. Example costs for roads upgrading required under the North Coast WARP quota system.

<i>Admin unit</i>	<i>Credits</i>	<i>Road upgrading miles to meet quota</i>	<i>\$/mile</i>	<i>Total</i>
<i>Klamath National Forest</i>	54	36	\$250,000	\$ 9,000,000
<i>Shasta-Trinity National Forest</i>	41	27.7	\$250,000	\$ 6,833,333
<i>Six Rivers National Forest</i>	28	18.7	\$250,000	\$ 4,666,667
<i>Mendocino National Forest</i>	32	21.3	\$250,000	\$ 5,333,333
<i>BLM Arcata Field Office</i>	6	4	\$250,000	\$ 1,000,000
<i>BLM Redding Field Office</i>	6	4	\$250,000	\$ 1,000,000
<i>BLM Ukiah Field Office</i>	4	2.7	\$250,000	\$ 1,000,000
<i>USFS TOTAL</i> <i>To meet roads upgrading quota</i>				\$ 25,833,333
<i>BLM TOTAL</i> <i>To meet roads upgrading quota</i> <i>To meet roads upgrading quota</i>				\$ 2,666,667 ¹

¹ – For the BLM in fiscal year 2024, \$465,000 was allocated to roads improvement projects

USFS Totals	77.5 miles	155 miles	155,000 acres	103.7 miles
BLM Totals	8 miles	16 miles	16,000 acres	10.7 miles

- 1 – One mile of roads decommissioning counts for 2 credits**
- 2 – One mile of instream habitat restoration work counts for 0.3 credits**
- 3 – 1,000 acres of fuels treatments counts for 1 credit. However total fuels treatments are capped at 10% of total and shown in parentheses. Fuels treatments above these values do not count towards credits**
- 4 – Roads upgrading value of zero not representative of longer term efforts.**
- 5 – Values for instream restoration reflect a lull in ongoing Trinity River restoration program actions.**
- 6 – Low values for BLM Ukiah reflect implementation of priorities on the east side of the field office in the Central Valley region.**
- 7 – Stream habitat restoration in Ukiah was focused in the Clear Lake drainage in FY24**

2) **A channel monitoring protocol must be developed with no linkage to 303(d) impairments.**

The Federal agencies have provided comments in the past about the inefficiencies of monitoring channels for water quality. For example, BLM lands in the North Coast Region are typically scattered in upslope settings and do not contain low gradient response reaches necessary to infer management trends. Where BLM lands do intersect these response reaches, the isolated parcels are typically downstream of mixed ownerships and thus do not provide information on Federal management actions. Region-wide monitoring efforts associated with the Northwest Forest Plan provide useful indices of water quality parameters. However, the adopted Order, while acknowledging this program in the response to comments, did not incorporate this into the adopted Order. The Order continues to ask for data from individual administrative units with no plan on how it will be used to inform water quality conditions across the North Coast Region. We note that effective feedback mechanisms are an important loop in evaluating water quality parameters, yet the Order does not establish these feedback loops. The Federal Agencies are left with vague standards provided in the North Coast Basin Plan.

3) **Development of a statistically rigorous temperature monitoring protocol is required with no clear linkage to impairment status of individual watersheds.**

Many Federal Agency lands within the North Coast jurisdiction are scattered. This makes it difficult to detect individual upslope stressors. Much of the existing temperature monitoring has been site-specific with the intent of characterizing a site or evaluating the effectiveness of an individual treatment. The Order requires additional methods, analyses, and reporting and does not link that data to upslope activities or 303(d) impairments. The Order asks for temperature data with no plan on how it will be used to inform thermal conditions across the North Coast Region. While the Board staff's response to public comments acknowledged the role of regional Federal monitoring and synthesis programs, the August 15, 2024, adopted Order continues to require development of protocols for individual units. Again, the Order does not establish effective feedback mechanisms for evaluating stream temperatures in the mixed-ownerships of Northern California. With the exception of the Trinity River, temperature metrics are vague and unclear on how these would inform 303(d) listing status.

4) **The CEQA monitoring requirements require Water Boards to dictate Federal Agencies' land management programs.**

As explained in Section IV above, the Order requires monitoring and reporting under CEQA that are already incorporated under "sensitive species" policies administered by the Federal Agencies. The language in the Order is vague and attempts to override current Federal management policies and laws. For example, SB-901 allows NEPA to substitute for CEQA. There is no delegation of authority from the Council on Environmental Quality to the state for NEPA.

5) **Excessive monitoring and reporting requirements will divert critical Agency resources and staff from critical projects.**

The Order requires up to 15 monitoring and reporting requirements requiring extensive interdisciplinary staff and management time to implement (See Table 3, Table 4, and Table 5). The time that would be spent complying with the monitoring and reporting requirements would impede development and implementation of other critical projects. Additionally, there are no details provided to show how these reporting requirements will be used to inform 303(d) impairments status across the region. In sum, the Federal Agencies simply do not possess the staff and resource capacity to accommodate the extensive monitoring and reporting requirements, especially when combined

with other pending or adopted Waivers and Orders that bisect Administrative Units.

Table 3. Initial reporting and analyses to submit upon adoption of order.

Reporting Task #	Monitoring/Reporting Task	Staff resources required	Comments
1	Develop Storm Patrol Protocol and submit	Hydrologist	The BLM notes that storm patrol efforts are conducted by a multitude of staff and informed by residents who may be affected by adverse conditions.
		Field Manager	
2	Develop and Submit In-Channel Monitoring Plan	Hydrologist	This effort would rely upon existing AREMP and AIM monitoring protocols to track stream conditions. Despite the Board's recognition of the comprehensive monitoring efforts coordinated by Federal Regional units, the Order still requires reporting from the individual administrative units.
		GIS specialist	
		State Office Program Lead	
		Field Manager	
3	Submit Final In-Channel Monitoring Plan	Hydrologist	Refer to comment above about existing regional processes to process instream monitoring data.
		GIS specialist	
		State Office Program Lead	
		Field Manager	
4	Submit Temperature Monitoring Methods	Hydrologist	Existing temperature monitoring often driven by project-specific questions and not long-term, watershed-scale monitoring
		Fish Biologist	
		GIS Specialist	

Table 4. Annual reporting requirements.

Reporting Task #	Monitoring/Reporting Task	Staff resources required	Comments
8	Submit Effectiveness Monitoring Report	Project Manager	

		Field technicians (2)	Reporting workloads will vary with number of projects.
		Hydrologist	
9	Submit Discharge Report	Hydrologist	
		GIS specialist	
		Field Manager	
10	Submit OHV Trail monitoring report	Recreation Program Manager	
		Hydrologist	
11	Submit WARP tracking form	Project Managers (2+)	
		GIS specialist	
		Hydrologist	
12	Submit MMRP report	Wildlife biologist	
		Botanist	

Table 5. Periodic reporting requirements.

Reporting Task #	Monitoring/Reporting Task	Staff resources required	Comments
13	Submit WARP Report	Project managers	
		GIS specialist	
		Field Manager	
14	Submit In-Channel Monitoring Report	Hydrologist	This reporting requirement includes more detailed data analysis and will likely
		GIS specialist	

		Monitoring technicians	require outside assistance from either an independent contractor or agency-led monitoring team to develop reporting metrics for individual administrative units.
		Field Manager	
15	Submit Temperature Monitoring Report	Fish Biologist	This reporting requirement includes more detailed temperature data analysis and report formatting.
		Technicians (2)	

6) The Order fails to recognize improvements in water quality parameters across Federal lands.

The Order applies across all watersheds regardless of Clean Water Act 303(d) listing status. The application of the Order to non-303(d) listed watersheds is questionable in light of ongoing management and their current status as unimpaired. As previously mentioned, the extensive reporting requirements provide no assurances or methods demonstrating how the data will be used to inform 303(d) listings across the region.

VI. Petitioner Requests Action by the State Board

Petitioner respectfully requests that the State Board conclude that the Regional Board’s action in issuing the Order was inappropriate and improper, and that the State Board assume the power to issue a single, state-wide Order for the ease of implementation and uniformity. Substituting the several regional orders for a single, state-wide order will provide clear requirements and guidelines that can be broadly and consistently applied across the state. This will ensure that the requirements imposed throughout the state are feasible, legal, and ultimately in the interest of preserving water quality throughout California.

Petitioners recommend a statewide MOU or MAA for the Federal Agencies. This would provide consistency among the several administrative units. A statewide process would leverage Best Management Practices (BMP) guidance from both the USFS and BLM. It would also provide valuable monitoring feedback on implementation and allow for adaptive management to address issues in real-time. Furthermore, sediment source treatments could be directed to the highest priority areas across the state. Monitoring and reporting requirements would be simplified for individual administrative units, rather than multiple, inconsistent and duplicative requirements proposed by different regional water boards.

Petitioners also request the Board remove the requirements for “off-project” monitoring, reporting and treatments. The Federal Agencies have a long history of treating legacy sediment sources. For example, the Arcata Field Office has treated nearly all of its logistically feasible sites over a 60-mile road network in the Lacks Creek Watershed (Humboldt County). This 10,000-acre watershed remains a high priority for fuels and fire hazard reduction. Many other examples exist on USFS lands and across other BLM Field Offices. The Federal Agencies will continue to implement these sediment reduction projects on federal lands, with deference to critical health and safety needs as resources allow.

Finally, Petitioners request the Board provide clear direction on how to enter the appropriate permitting information. Under the current Order, up to 15 monitoring and reporting requirements are mandated with no guidance on how to accomplish the task.

Petitioners are additionally submitting a request to the State Board to stay the Order pending the determination of this petition. Petitioners understand they will be given the opportunity to amend this petition and submit detailed points and authorities in the event this petition is converted to active status.

VII. Statement of Points and Authority

The Regional Board has exceeded its authority under the Clean Water Act.

33 U.S.C. § 1323 states that each federal agency with jurisdiction or “engaged in any activity resulting, or which may result, in the...runoff of pollutants...shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity...” The North Coast Order requires agencies to meet quotas that are not tied to government activities, but that are independent of any government action. Further, it does not appear that other entities have been required to meet similar quotas without a connection to the activities they are undertaking.

Pursuant to 31 U.S.C § 1341, officers or employees of the United States Government may not “make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund.” The North Coast Order requirements would require the Federal Agencies to obligate funds and resources in excess of amounts approved by Congress.

Petitioners will provide further statement of points and authorities in the event the State Board activates this petition for review.

VIII. Statement of Transmittal of Petition to the Regional Board

A copy of this petition has been transmitted to the Executive Officer of the Regional Board on September 16, 2024.

IX. Issues Raised in the Petition were Presented to the Regional Board Before the Action

The Federal Agencies provided comments and objections to the North Coast Regional Board’s prior to the issuance of the Order. These include the following mailings:

- Klamath National Forest (August 15, 2024)
- Mendocino National Forest (August 15, 2024)
- Six Rivers National Forest (May 4, 2024)
- Joint USFS-BLM comment letter (August 8, 2024)
- BLM Comment Letter (May 6, 2024)
- BLM Comment Letter (May 3, 2023)

Respectfully submitted,



Date: September 16, 2024

Matthew Gerlomes
U.S. Department of Agriculture Office of the General Counsel

Kathryn Brinton,
U.S. Department of the Interior Office of the Regional Solicitor

cc: Jennifer Eberlien, Regional Forester, Pacific Southwest Region USFS
Joseph Stout, State Director BLM California
Sam Flanagan, Geologist for BLM California
Gabriel Venegas, Regional Hydrologist for USFS
Joshua Rider, USDA Office of the General Counsel
Alejandro Chavez, USDA Office of the General Counsel