

September 19, 2024

VIA ELECTRONIC MAIL

waterqualitypetitions@waterboards.ca.gov

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 Conditional Waiver of Waste Discharge Requirements for Waste Discharges Resulting from Timber Harvest and Vegetation Management Activities in the Lahontan Region (Order No. R6-2024-0035)

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 Conditional Waiver of Waste Discharge Requirements Order issued by the California Regional Water Quality Control Board, Lahontan Region, on August 20, 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

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CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

LAHONTAN REGION

In the Matter of Waiver of Waste Discharge
Requirements Order No. R6-2024-0035

**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 “Conditional Waiver of Waste Discharge Requirements for Waste Discharges Resulting from Timber Harvest and Vegetation Management Activities in the Lahontan Region”, Order No. R6-2024-0035 (“the Order” or “Timber Waiver”), issued by the Executive Officer of the California Regional Water Quality Control Board, Lahontan Region (“Regional Board”) on August 20, 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: [2024 Timber Waiver \(ca.gov\)](#)

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 Petitioners

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

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Vallejo, CA 94592

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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 Waiver of Waste Discharge Requirements Order No. R6-2024-0035, dated August 20, 2024.

III. The Date the Regional Board Acted

The date of the Regional Board's action subject to review is August 20, 2024.

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

Petitioners' concerns with the Timber Waiver were presented to the Regional Board during the public comment period and in prior scoping meetings. The Regional Board did make some modifications to the proposed permit. Petitioners believe the Timber Waiver provides a good basis for developing coverage of our timber and vegetation project activities. However, the issuance of the Order was still inappropriate, improper, and impractical for the following reasons:

- A. The Waiver is one of four nonpoint source permits currently being implemented or developed by regional boards for Federal Agencies across California. The Regional Board's Waiver establishes several requirements and guidelines that differ significantly from other regional orders and waivers of waste discharge that are being simultaneously promulgated. Many National Forests, BLM Field Offices, and individual federal projects are bisected by more than one water board jurisdiction. For example, the Modoc National Forest is covered by three Water Boards—Lahontan, Central Valley, and the North Coast Regional Boards. Each region has extensive and varying monitoring and reporting requirements. 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 Water Body Buffer Zones (WBBZ) restricts active ignition for prescribed fire projects. WBBZ restrictions are based on whether there are fish present or whether the water body or source is used for consumptive uses. Alternatively, the Forest Service already uses Streamside Management Zones (SMZ) for forests under the Sierra Nevada Forest Plan Amendment, and Riparian Conservation Areas (RCA) for the Inyo National Forest Plan (2019). Under these plans, the USFS has the flexibility to ground truth project-specifics of these areas that considers factors such as stream class, channel aspect and stability, side slope, steepness, and slope stability, among other factors. This is the field work that an experienced professional would do on such project. However, the WBBZ requires measurement of certain setback distances from waterbodies and therefore take the flexibility away from the Federal Agencies to follow forest plans and land management plan guidance, as well as the use of best professional judgment. There is no scientific basis offered for the WBBZs or the reason for replacing Federal Agency planning documents guidance.

Additionally, the WBBZs prohibition of active ignition takes away the Federal Agencies' ability to actively manage riparian areas for the purpose of removing decadent overgrowth of riparian woody vegetation that have encroached into these areas. Landscape health and treatment intended to reduce wildfire risk or post-wildfire impacts is critically important to protecting public safety, as well as water quality. Active ignition is a vital part of vegetation treatment projects necessary to mitigate fire risk and severity. Without effective treatment, fires have fuel loading that

will increase the burn severity. As a result, sediment loading will increase during the winter months and mild to high intensity rainstorms.

C. Category 3: Emergency Rehabilitation Activities:

F.3.1.2 Activities must not be initiated more than 120 days of a wildfire being declared controlled or the initial occurrence of and emergency not related to a wildfire.

No explanation is provided as to why this requirement is included. For clarity, the Federal Agencies do not use the term “controlled”; Federal Agencies use the term “containment”. Containment of a fire starts the clock on when emergency activities need to be started and completed. For BAER, the time frame is not to exceed 1-year for emergency activities to be completed. Many instances of emergency activities are not started until well after the 120-day period. Recent examples include the August Complex, Dixie, and Windy Fires.

This requirement is not acceptable to the Federal Agencies because it does not conform to our fire declaration terminology or BAER guidance and protocols for initiation of emergency activities and funding timeframes. Furthermore, it leads to permit confusion, and will likely limit and delay emergency activity implementation for the purpose of moving emergency activities into the permitting process

D. The monitoring and reporting requirements in this permit are overly burdensome and would require, at a minimum, one full-time staff resource at the GS-9 level per National Forest and BLM District Office to prepare project enrollment forms and monitoring and reporting documents. The State Waterboard designated the USFS as the Water Quality Management Agency for certain activities on National Forest System lands in California. The USFS is concerned that the Waiver will create additional burdens for Federal Agencies during implementation with cumbersome monitoring and reporting requirements rather than streamlining necessary vegetation management activities.

Specifically, the Federal Agencies are concerned that the new requirement to designate and manage Significant Existing and Potential Erosion Sites (SEPES) will only add more time and effort towards implementing the Timber Waiver program and significantly slow the pace of their post-fire recovery efforts.

E. The Timber Waiver does not align with California’s Wildfire and Forest Resilience Action Plan signed by the Governor which requires implementing actions that increase the pace and scale of environmental restoration and land management efforts. As explained above, the Timber Waiver impedes the Federal Agencies’ ability to increase the pace and scale of ecological restoration. The additional categories, expansive definitions of Timber Harvest and Vegetation Management Activities (including hazard trees), prescriptive language, expanded definition of waste, the designation of SEPES, and restrictions of active ignition during prescribed burns adds significant complexity that will undoubtedly slow the pace and scale of restoration work.

F. Many National Forest and BLM Districts and Field Offices do not have the staff and resources necessary to comply with the monitoring and reporting requirements set forth in the Order. Moreover, these requirements do not support increasing the pace and scale of vegetation treatment projects that will reduce the risk of catastrophic fires and that are necessary to protect public safety, natural resources, and water quality in the surrounding areas. 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.

G. The cumulative effects of the above-mentioned concerns from the Federal Agencies presents significant challenges for the compliance, implementation, and effectiveness of the Timber Waiver.

V. Petitioner is Aggrieved

Petitioner is aggrieved for the reasons set forth in paragraph IV above.

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 Timber Waiver 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 clear, feasible, 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. Monitoring and reporting requirements would be simplified for individual administrative units, rather than multiple, inconsistent and duplicative requirements proposed by different regional water boards.

VII. Statement of Points and Authority

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 Lahontan Timber Waiver requirements could 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 19, 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 Lahontan Regional Board's Waiver prior to the issuance of the Order. These include the following mailings:

Tahoe National Forest (February 2, 2024)

Lake Tahoe Basin Management Unit (February 5, 2024)

Inyo National Forest (February 5, 2024)

Modoc National Forest (February 2024)

Respectfully submitted,



Date: September 19, 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
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