



**VIA ELECTRONIC MAIL**

April 14, 2010

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**Re: Comments on USFS Water Quality Management Plan Objectives and Documents Provided to Stakeholders Group**

Dear Gaylon Lee:

On behalf of the Center for Biological Diversity and as a Stakeholder representative for aquatic biology, I am writing to comment on the BMP documents that you circulated to the stakeholder group. My understanding from the meeting on March 23, 2010 is that comments would be accepted until April 15. These comments are provided *in addition to* the excellent comments submitted by several other stakeholders particularly the recent comments submitted by Karen Schambach, Crystal Bowman, and Don Rivenes, therefore I will not repeat many of their comments and suggestions. I also want to note that the photos and documentation submitted by John Buckley regarding the impacts to water quality from poorly managed roads and grazing, also reflects conditions that I have witnessed and/or been made aware of on many other National Forests in the State of California in the Sierra Nevada mountains and in other areas of the State. The use of roads in these forests for recreation is increasing along with the impacts and has not been adequately addressed by the Forest Service in the WQMP documents reviewed to date.

**Specific Comments on Documents**

**WQMP Intro:** The statement that BMPs are seen as a “process”, general, and non-prescriptive and that the agencies believe *from the outset* that they may not be effective in protecting water quality is unacceptable. While it certainly makes sense that no single set of BMPs will be applicable to all areas of the State or all site-specific situations, the BMPs must have enough specificity to be implemented consistently in similar areas and there must be a commitment from the Forest Service that they will be fully implemented to protect water quality. Similarly, while monitoring and maintenance are clearly important for improving BMPs and their implementation, if BMPs do not achieve a certain level of water quality protection, there must be terms in the WQMP and the waiver that trigger specific actions such as closing roads,

denying new project approvals, or removing grazing to protect water quality. Given the Forest Service's poor record at implementing BMPs, it makes little sense for the Board to agree from the outset that the Forest Service need not meet specific goals—to the contrary, the Board must insist that the Forest Service do so. Water quality standards are not “soft” goals, they are specific regulatory requirements and the WQMP and the waiver with conditions issued by the Board must provide enforceable standards that the Forest Service is expected to meet.

The use of state-wide prioritization for both legacy water quality problems and restoration of impaired waters is also of concern. Given the diversity of ecosystems and water quality issues through out the state, prioritization on a state-wide basis may lead to some regions having little or no funding to correct issues that could be dealt with in a relatively short time-frame and with well known methods while funds state-wide are funnelled into persistent problems which have proved extremely difficult to solve. This is not a good strategy for ensuring the best water quality over all.

For the Objectives that are set out as “the performance standards to which the Water Boards hold the Forest Service accountable” I believe that the edits and additions from Don Rivenes and Crystal Bowman provide needed clarification and certainty. Most importantly, it must be clear at the end of this process that the Board intends to hold the Forest Service accountable for meeting water quality standards, improving the condition of impaired water segments, as well as addressing legacy pollution, and that the Board will not allow sub-par implementation of BMPs by the Forest Service to excuse the Forest Service from meeting water quality standards.

***Proposed Priorities for Improvement of USFS Administrative Processes Affecting BMP Implementation:*** This appears to be a very good first step at identifying needed areas for improvement. However, it is unclear from the documents when these new administrative processes will be developed or adopted? In addition, the Forest Service process should ensure that review of the implementation of BMPs is not done by the same staff who are responsible for implementation—there must be real accountability—and reports on the implementation of BMPs should be sent to the Board on a regular (quarterly) basis and be made available to the public.

***Condensed BMP Ratings:*** It is unclear how the ratings were compiled, whose opinions were sought in determining the “levels of concern” and the document appears to suffer from lack of data in many areas (or at least that appears to be the meaning of the many question marks). For example, it is unclear if pesticide use and application were rated as a less of a problem or simply if fewer respondents provided any rating on these issues. Because the impacts of pesticide use and application can be extremely detrimental to water quality and particularly to aquatic and riparian species, this is of particular concern. Similarly, it is unclear whether “Timber Harvest Unit Design” and “Surface Erosion Hazard Rating For Timber Harvest Unit Design” are believed to be areas that do not require improvement or rather whether they are only seen as of less concern *relative to* other areas. Because erosion is one of the most important water quality concerns in many of the forests, and is of particular concern for aquatic species health, these issues should be clarified. Moreover, by providing only “average” concern levels it is impossible to discern if some issues are more or less important in the different regions.

***Proposed BMP Priorities Chart:*** In reviewing the proposed priorities for updating the BMPs several questions arise. The prioritization of revising BMPs that are “Effective less than 90% of time even when properly implemented” is clearly critical, however, there was no justification provided for allowing BMPs that admittedly are of either “very high concern level due to poor implementation, inherent WQ risk, etc.” or of “Moderate – high concern level due to poor implementation, inherent WQ risk, etc.” to continue in effect without any action by the Board indefinitely. Compliance with water quality standards is not voluntary, it is mandatory. If the Forest Service and/or the Board does not have sufficient resources to revise the worst of the BMPs to be adequate and to ensure proper implementation of the BMPs to protect water quality, then the Board should adopt interim measures that will protect water quality immediately. For example, where BMPs for roads are admittedly inadequate, some roads likely need to be closed until the BMPs have been fully implemented to improve road conditions and water quality is protected. For grazing where BMPs are inadequate or not implemented, the Board and the Forest Service should agree that no Annual Operating Instructions (AOIs) will be issued by the Forest Service or turn out allowed until adequate protections are in place on each allotment to ensure water quality is protected. Similar measures should be put in place to protect water quality before and additional approvals are issued for timber and fuels/fire projects if adequate BMPs are not in place and fully implemented. By providing specific management triggers that act as a safety-net for water quality, the Board will both provide impetus for the Forest Service to revise and fully implement adequate BMPs and protect water quality until the Forest Service does so.

***DRAFT USFS REGION 5 BMPs based on draft national core BMPs Rangeland Management Activities:*** This BMP should be revised to require that all livestock be excluded from water sources at all times including all wet meadows, creeks, rivers, springs and seeps. If it is necessary to cross water features with livestock at any time they should be kept moving across in a timely manner. At no time should livestock be allowed to graze in riparian areas. It is well established that livestock significantly impact riparian vegetation and trample bed and banks of small and large creeks and streams as well as springs and seeps causing erosion and impacting the value of these areas for native fish and amphibians and other riparian obligate species including birds. Moreover, livestock directly foul waters causing bacterial and nutrient pollution.

***Control of Road Drainage:*** This BMP does not appear to address water crossings that do not have culverts which are of particular concern because they not only increase erosion into streams but also damage stream beds and banks which can spread impacts to riparian areas along the water course. Moreover, the BMP does not discuss the potential impact of culverts on aquatic species or the importance of proper design to reduce such impacts, the need for avoidance of activities in some areas with sensitive species during certain seasons, or the need for seasonal maintenance to ensure passage is kept open through culverts.

**A State-wide Waiver Is A Coarse Tool And Will Not Adequately Protect Water Quality including Beneficial Use By Fish and other Species In The Widely Varying Ecosystems within the State**

The documents provided and the discussions at the meetings have raised significant concerns about the path that the Forest Service and the Board are proposing with a revised

WQMP forming the basis for a new state-wide waiver. I am particularly concerned with the lack of commitment to meet water quality standards. Moreover, a state-wide waiver with conditions, even if it is designed to be implemented by the regional boards, appears unlikely to have the necessary specificity to provide for transparent process and robust monitoring and enforcement by the regional boards. Moreover, there is little evidence to date that the state-wide approach will result in meaningful BMP standards that reflect the needs of the forests in each region. Rather, it appears that the state-wide approach result in a set of BMPs that provide only the minimal water quality improvement and protection rather than meeting the required standards and improving impaired waters.

I look forward to continuing to work with the State Water Resources Control Board as a stakeholder in this process.

Sincerely,

A handwritten signature in black ink, reading "Lisa T. Belenky". The signature is fluid and cursive, with the first name "Lisa" being the most prominent.

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