

To the State Water Board Staff:

From: Don Rivenes, Environmental Conservation Representative

I am submitting the following comments for your consideration. These comments may or may not represent views of other members of the Stakeholder Group and only attempt to bring up various issues for consideration and discussion.

HOW TO ASSURE WATER QUALITY PROTECTION IN OUR NATIONAL FORESTS

Objective: Accountable and Transparent Enforcement requirements

- 1) WQMP meets the 5 elements of the NPS Policy
- 2) WQMP specifically sets up the enforcement structure
- 3) WQMP specifically describe the full Adaptive Management process that meets the seven principles of Adaptive Management.
- 4) A Statewide waiver must be equal or stronger than the strongest RWQCB waiver.
- 5) NC waiver, if template, needs to be beefed up, with vague language replaced with strong language, and deadlines and consequences spelled out
- 6) In areas in which National Forest and RWQCB boundaries are not in sync, the two RWQCB's to settle which RWQMB will manage the Waiver Discharge Requirements (WDR) or manage the WDR by joint agreement
- 7) SWRCB fully funds the regulatory enforcement process

Objective: Fully Effective BMPs

- 1) Avoid ambiguous language
- 2) RWQCB approved BMPs
- 3) Full implementation at beginning of project.
- 4) Specific Adaptive Management program for each project that meets the seven principles of AM
- 5) Commitment by Forest Service to complete Adaptive Management Program for each project
- 6) Accountability and Transparency at each decision point
- 7) Consequences clearly specified for failure to meet any BMP requirement
- 8) SWRCB fully funds the RWQCB BMP oversight

Objective: Accountable and Transparent Monitoring

1. Specific monitoring standards for each project
2. Monitoring program for each project published and available to the public
 - a. Installation monitoring
 - b. Performance monitoring
 - c. Effectiveness monitoring
 - d. Completion monitoring
 - e. Assessment of monitoring
 - f. Evaluation of monitoring

3. Follow-up monitoring to assure that actions are taken to correct problems and lessons learned are incorporated into the next project and ongoing projects.
4. Consequences of failure to implement any portion of the monitoring program specified

Objective: Accountability and Transparent disclosure of impacts

1. Complete EIR for significant change in current regulatory process
2. Alternatives in EIR fully described.

Background

The WQMP “sets forth best management practices (BMPs) to be used for controlling nonpoint source (NPS) pollution originating on those National Forest System (NFS) lands, and the processes for implementing those BMPs. BMPs are the practices both the State and Federal water quality regulatory agencies expect the Forest Service to implement to meet its obligation for compliance with applicable water quality standards, and to maintain and improve water quality.”

It further states: “Absent evidence to the contrary, proper installation, operation and maintenance of State-approved BMPs are presumed to meet a landowner's or manager's obligation for compliance with applicable water quality standards. If subsequent evaluation indicates that approved and properly installed BMPs are not achieving water quality standards, the State should take steps to: (1) revise the BMPs, (2) evaluate and, if appropriate, revise water quality standards (designated beneficial uses and water quality objectives), or (3) both of the foregoing.”

Concerns with current and proposed WQMP:

New projects

Because of the wide range of projects implemented throughout Region 5 and the many different Forest Service officials who have been involved in administering potentially harmful actions and activities on national forest lands of the region, there have been widely varying results. Even if the Water Board assumes that properly installed BMPs are not capable of achieving water quality standards, there is ample evidence that:

- 1) The existing BMPs in the past have not been properly installed;
- 2) Enforcement provisions do not adequately exist that will force compliance with the WQMP and the BMPs;
- 3) Projects have not been adequately monitored to see that they are achieving the desired results;
- 4) There has clearly been insufficient funding identified and allocated for the administration and enforcement of the WQMP;
- 5) There is no policy in place that will require the processing and response to complaints from the public by either the U.S. Forest Service or the Water Board concerning specific water quality impacts or watershed damage; and

- 6) A full Adaptive Management policy and process has not been defined and implemented

Remediation projects

There has not been a concerted funded effort by the Forest Service to identify and prioritize potential aquatic risks from current sediment delivery sites that are in need of remediation. Even when significant problems are identified, there is no specific requirement for the Forest Service to work with the water boards to remediate the problems.

For example, the Tahoe National Forest completed a Draft Roads Analysis in 2004 that, in part, analyzed the collector functional class roads as to the extent of total aquatic risk, stream channel risk (based on road-stream crossing density and road-stream proximity), erosion risk (based on road position on slope and erosion potential, erosion potential (based on soil erodibility, precipitation, slope steepness, and road surface type), biotic condition (based on habitat quality and habitat presence), and habitat quality (based on stream crossing density per planning subwatershed, riparian road mileage per planning subwatershed, and road distance to stream - this information reflects the degree of potential impacts to hydrologic connectivity and species migration).

Every road but one was found to be at moderate to high risk in one or more risk categories. In summary, the five major river basins (such as the Yuba River) in the Tahoe Forest were found to contain a total of 2250 miles of roads with High Aquatic Risk, and have a Percent of Roads with High Aquatic Risk ranging from 29% to 44%. But the key finding stated: "the funding for road maintenance is inadequate to fully maintain the road system to standards." Whether or not BMPs might be in place directing how road maintenance should be implemented, a failure to have minimal funding results in the inability of the Forest Service to do even the basic necessary maintenance. Ruts deepen, sediment washes off into streams, inside drainage road gullies deepen, and culverts plug and blow out. The WQMP must address this inadequate funding problem with a definitive remediation policy tied to consequences for a failure to implement desired BMP actions.

Next Step Recommendations for the WQMP

As a general recommendation, the SWB staff should make sure that the WQMP specifies the role to be played by the State Water Board and the Regional Water Quality Control Boards, especially in the areas of monitoring and enforcement. The outline for the WQMP only refers to Statewide Administration and Management Practices, Statewide Programmatic, Statewide Monitoring and Planning, and Statewide Prioritization of Recovery/Restoration Needs.

Specifically, I ask that, as the Staff completes the various chapters of the WQMP, that they concentrate on making sure that the:

- 1) WQMP meets the 5 elements of the NPS Policy
- 2) WQMP ensures full compliance with the Clean Water Act
- 3) WQMP specifically sets up the full enforcement structure for compliance failure
- 4) WQMP specifically describes the full Adaptive Management process that meets the seven principles of Adaptive Management and
- 5) WQMP describes the process for accountable and transparent monitoring of each project at installation and completion, with assessment of the performance and effectiveness of the monitoring, and evaluation of the process to guide future projects.

The ultimate goal is to produce a WQMP that assures the public that the agencies have set up a process that ensures the protection of our key natural resource – water quality. The preparation of a robust EIR for public approval of this significant change in current regulatory process with alternatives fully described will be a significant step in showing the accountability and transparency of this project.

WQMP and NPS Waivers

The Draft WQMP contains limited references to waivers:

- 1) “The Porter-Cologne Act was amended to require that all Water Board waivers of waste discharge requirements be formal, temporary, conditional, and include monitoring as a condition.”
- 2) “The SWRCB was, for the first time, authorized to adopt its own waivers, which could be statewide.”

As this process continues for the next year, the Stakeholder Advisory group must concentrate on making sure that the staff develops policy language in the WQMP that contains sufficient enforcement provisions of violations of activities covered by any NPS waivers and activities not covered by waivers.

For example, if a project or allotment does not properly install the appropriate BMPs, that project or allotment should be stopped, and subsequent projects or allotments not be allowed by that Forest until correction or remediation is completed.

Any NPS waiver that may be adopted and is applicable to a forest or forests should also be withdrawn if policies of the WQMP are not complied with:

- 1) Monitoring requirements are not performed (including reporting)
- 2) Identification of potential aquatic risks from active and potential sediment delivery sites is not done prior to installation of the waiver
- 3) Remediation schedules are not met
- 4) Public complaints have not been answered according to required timelines.

Conclusion

I am providing these comments to help focus our joint activities in support of this Stakeholder Advisory process. In the near future and as staff input is received, I will further review and comment on explicit language that must be included in the WQMP.

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