

WAIVER SUMMARY (from Initial Study)

WHAT IS THE WAIVER AND ITS PURPOSE?

The Waiver is a regulatory mechanism intended to ensure that discharges related to certain NPS activities on NFS land comply with the following:

1. Applicable State water quality requirements
 - a. Primarily the WC §13000 *et seq.*, and
 - b. Related water quality control plans and policies
2. Requirements implementing CWA, especially TMDLs
3. Requirements implementing CZARA, i.e., the NPS Program Plan, and the NPS Policy.

The Waiver is consistent and complies with all of the above.

Pursuant to WQ §13269, the Waiver conditionally waives the requirement for the USFS to submit ROWDs and/or obtain WDRs for discharges, or threatened discharges, of wastes from certain NPS activities that pose minimal to moderate potential threats to water quality.

The Waiver is specifically intended to ensure that:

1. Certain ongoing activities on NFS land that could result in NPS discharges comply with state water quality requirements;
2. USFS continues to conduct watershed restoration activities as called for in its Guidance; and
3. USFS utilizes all applicable standards, guidelines, and BMPs necessary to reduce potential impacts to water quality to a level of non-significance.

The Waiver prohibits the creation of pollution, contamination, or nuisance, as defined by WC §13050.

WHICH ACTIVITIES DOES THE WAIVER COVER AND WHICH DOES IT NOT?

The Waiver covers the following NPS activities on NFS lands, if their potential WQ impacts can be reduced to less than significant through implementation of USFS Guidance and the USFS WQMP, as well as its own supplementary conditions:

1. Timber management
2. Road maintenance, construction, and decommissioning activities???
3. Grazing
4. Non-motorized recreational activities
5. Motorized recreational activities
6. Vegetation manipulation/fuel management
7. Fire Suppression & BAER
8. Watershed restoration/legacy problem remediation

The Waiver does not cover:

1. Activities requiring any other kind of Water Board permit:
 - a. WDRs for any activities whose potential impact is more than moderate.
 - b. Activities needing an NPDES permit
 - c. Construction stormwater permits or other activities needing an NPDES permit
 - d. 404 dredge and fill permits or 401 Water Quality Certification
 - e. Abandoned mines
 - f. Hydropower relicensing
 - g. Septic tanks or alternative wastewater disposal systems

- h. Building construction subject to the Uniform Building Code
 - i. Permit requirements of any other agency.
2. Any activities that threaten to cause significant WQ impacts or violation of applicable WQ requirements.

The Waiver does not authorize:

1. USFS to do anything that it does not otherwise have the authority to do.
2. Any projects on NFS land that cannot meet the conditions set forth in the Waiver, and so must be regulated through WDRs or some other permitting mechanism.
3. Any act that results in the taking of a threatened or endangered species.
4. Discharges from the application of herbicides or pesticides.
5. Development of new water supplies or change the need for existing water supplies.

WHAT IS THE RELATIONSHIP BETWEEN THE WAIVER AND OTHER WATER BOARD REGULATORY MECHANISMS?

The Waiver supersedes application of R5 and R6 waiver requirements to covered NPS activities on NFS lands.

The Waiver does not supersede:

1. The current R1 USFS waiver.
2. Any more stringent requirements established in agreements between USFS and Native American tribes.

The Waiver anticipates that reasonable implementation of USFS Guidance, USFS WQMP, and Waiver conditions will achieve compliance with TMDL requirements for sediment, temperature, nutrients, and dissolved oxygen.

The Waiver allows future RWQCB WDRs or future TMDL implementation plans to supersede its requirements. If water quality problems occur an affected Regional Water Board or its Executive Officer may also take enforcement actions in accordance with the Water Code to prevent or correct water quality impacts.

The Waiver allows:

1. The State Water Board or its Executive Officer to deny or terminate Waiver coverage at any time if it is determined that a project may result in impacts to water quality.
2. The USFS and/or the State to more selectively terminate coverage for failure to adequately comply with WQ requirements by any of the following:
 - a. Individual projects/activities.
 - b. Classes of projects/activities.
 - c. Projects/activities implemented by specific national forests.

WAIVER CONDITIONS

The Waiver requires that all activities undertaken by the USFS or its contractors and permittees pursuant to this Waiver comply with: 1) the USFS Guidance, 2) the USFS WQMP, and 3) the Waiver's own conditions.

The Waiver establishes the two following categories of activities based on potential risk to water quality:

Category A - low risk activities (e.g., non-commercial Christmas tree cutting, hazard tree removal along roads) for which there are no specific conditions; and

Category B - moderate risk activities (e.g. timber harvest) that require additional specific conditions.

General Conditions (Applicable to Both Categories)

The Waiver requires USFS to do the following:

1. Comply with any applicable water quality control plan
2. Comply with applicable local, state or federal laws and regulations
3. Implement USFS Guidance
4. Implement USFS WQMP, both as it is currently updated and as it may be amended from time to time in the future.
5. Implement Waiver's supplementary conditions to reduce any WQ impacts to less than significant.
6. Comply with all applicable WQ requirements.
7. Conduct an inspection program to document and verify ongoing practices and implementation.
8. Conduct a monitoring program to document and verify effectiveness of its practices and procedures in maintaining, protecting, and helping to restore WQ.
9. Report regularly to Water Boards

Specific Conditions (Applicable Only to Category B Activities)

Conditions that have been requested by and are specific to a Water Board region as needed to address regional differences.

Environmental Review and Planning

The Waiver requires multi-disciplinary review of a proposed project, including review by watershed specialists to identify on-the-ground prescriptions needed to implement the USFS WQMP, and any additional necessary control measures for the proposed activity.

The Waiver requires that a federal Forestry Professional, Natural Resource Professional, or supervised designee do the following:

1. Identify in planning documents and disclose in NEPA documents whether any of the following are included within a proposed project:
 - b) activities within or which could affect:
 - i. designated riparian zones; or
 - ii. wetlands; or
 - iii. known landslides or unstable areas.

- c) type of activity:
- i. construction of new watercourse crossings or reconstruction/modification of existing watercourse crossings;
 - ii. use or reconstruction of existing, or construction of new, landings or skid trails within designated riparian zones;
 - iii. equipment operations within designated riparian zones, except on existing permanent roads or crossings;
 - iv. prescribed fire within designated riparian zones;
 - v. pile burning within designated riparian zones;
 - vi. road decommissioning within designated riparian zones;
 - vii. instream restoration projects;
 - viii. forest restoration, including timber harvest and fuel reduction projects involving thinning within outer edges of designated riparian zones which utilize endlining or equipment; or
 - ix. heavy equipment use on slopes over 40%.
2. When any of these conditions listed above exist, clearly indicate within NEPA documents the project modifications, design features, and/or site-specific prescriptions to be implemented to avoid any adverse impact(s) to water quality.

Where a proposed activity includes direct or indirect effects to water quality, the Waiver requires that the USFS:

1. Conduct a cumulative watershed effects (CWE) analysis. The scale and extent of CWE analyses will be commensurate with the scale and intensity of the projects seeking coverage under this waiver. CWEs analyses will follow guidance in the regional CWE policy, R-5 FSH 2509.22, Soil and Water Conservation Handbook, Amendment 1, and may range from qualitative reasoning to application and interpretation of quantitative models.
2. Include specific measures in the proposed project needed to reduce the potential for CWEs in order to assure compliance with applicable water quality requirements.

The waiver requires that:

1. The specific on-the-ground prescriptions and control measures identified in the NEPA analysis and decision are carried forward into the documents that will actually be implemented by those conducting the project (e.g., contracts, permits, work orders, or other implementation mechanisms).
2. All project activities be conducted in accordance with the NEPA document and/or with the waiver application, including project modifications, design features, and/or mitigation measures to avoid any adverse impact(s) to water quality.

Water Board Application Process

The Waiver requires that an application for coverage under the Waiver be accompanied by documentation sufficient for an affected Regional Water Board to determine eligibility for the Waiver, including, but not limited to, the following:

1. The NEPA environmental documentation addressing the potential for water quality impacts and identification of BMPs and on-the-ground prescriptions, and
2. Any additional assessment or analysis needed to determine compliance with the waiver conditions.

In addition, prior to enrolling a project in the Waiver, qualified Water Board staff will evaluate it to ensure that mitigation measures included are appropriate and adequate for site conditions and whether mitigations are sufficient.

Designated Riparian Zones

The Waiver requires that:

1. The USFS manage and maintain designated riparian zones to ensure retention of adequate vegetative cover that results in natural shade conditions within 300 feet slope distance on each side of fish-bearing streams, 150 feet slope distance on each side of perennial streams, and 100 feet slope distance on each side of ephemeral / intermittent streams, or the site potential tree height distance on each side of the stream, whichever is greatest (per NWFP ACS and SNFPA AMS objectives).
2. Areas where soil has been disturbed by project activities, excluding grazing, within designated riparian zones must be stabilized prior to the beginning of the winter period, prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours, or at the conclusion of operations, whichever is sooner.
3. The USFS implement the designated riparian zone program and prevent, minimize, and mitigate sediment discharges by following the appropriate BMPs and standard erosion control techniques for activities, adjacent to streams and drainages, or other locations or situations where likelihood of discharge exists (e.g., burned areas).

Rangeland Management

The waiver requires that:

1. USFS report to Water Boards the schedule for reviewing grazing allotments according to the most recent revisions of the USFS rescission schedule.
2. Each Forest ensure that grazing activities are consistent with the ACS/AMS goals, the USFS WQMP, and the requirements to review allotments.
3. The USFS report, within 10 days of discovery, to the affected Regional Water Board, areas within designated riparian zones that are disturbed by grazing that may result in a significant discharge, and any measures taken to prevent, minimize, or mitigate the potential to discharge.

Road Management

The Waiver requires that:

1. Each national forest will follow its Wet Weather Operation Standards and minimize erosion and riparian disturbance from roads, watercourse crossings, road decommissioning, or other activities that have the potential to discharge sediment.
2. USFS minimize new road construction in watersheds designated as "Key Watersheds" or "Riparian Reserves" and in high risk watersheds.

Pesticide Management

The Waiver requires that:

1. The USFS notify the affected Regional Water Board in writing at least 90 days prior to the proposed application of pesticides within a designated riparian zone.
2. The notification must include the type of pesticide, method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality control plans.

3. Subsequent changes to the proposal must be received by the affected Regional Water Board in writing forthwith, and in no event less than fourteen (14) days before the application, unless Regional Water Board staff agrees in writing to a lesser notice.

Other Projects

The Waiver requires that USFS obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009-DWQ) for non-timber construction projects on NFS land that disturb one or more acres of soil, or less than one acre but are part of a larger common plan of development that in total disturbs one or more acres.

Legacy Problem Remediation and Watershed Restoration

The waiver requires that the USFS shall actively address legacy or pre-existing discharges and/or threats to water quality, including doing the following:

1. The USFS must inventory and prioritize pre-existing sediment delivery sites and develop a remediation schedule.
2. The USFS must make legacy site inventories available to Water Board staff for review and allow inspection of sites as needed to assist in prioritization.
3. The USFS must actively address threats to water quality from the inventoried pre-existing controllable sediment discharge sites.

Each Forest is expected make reasonable progress towards completing inventories and remediating legacy nonpoint sites, especially where timely implementation is necessary for sediment TMDL compliance.

The Waiver requires that:

1. USFS follow its Guidance for watershed assessment and planning to inventory, prioritize, and remediate existing sediment discharge sites, i.e., those sites that are not the result of any new activities.
2. USFS inventory and remediate such sites in the project area where individual projects are planned in a watershed without such an inventory and plan.
3. Within six (6) months of adoption of the Waiver, each Forest must provide to any affected Regional Water Board a list of watersheds, including the watershed name and the date the watershed assessment and/or watershed restoration plan was completed or is scheduled for completion. The list must be updated annually.

Monitoring and Reporting

The Waiver includes a MRP to provide a feedback mechanism to ensure that mitigation measures are implemented properly and function as intended.

The waiver requires monitoring and reporting (MRP). It is based on the monitoring program set forth in the updated USFS WQMP, which includes focused administrative effectiveness monitoring for Category B - moderate risk activities, non-random BMPEP in "high risk" watersheds, road patrols after major storms, retrospective monitoring of a subsample of BMPs five years post-implementation, and in-channel long-term monitoring.

The MRP requires development of a quality assurance and quality control plan to address most aspects of the monitoring program, such as standardized procedures for selecting sampling

locations, standard operating procedures and methods, training, and a feedback loop for modifications as necessary.

The mitigations required by the Waiver conditions and accompanying MRP are considered to be adequate to avoid adverse impacts to water quality.

The activity shall be monitored, pursuant to the Monitoring and Reporting requirements, to assure that project modifications, design features, and/or mitigation measures were implemented and effective in avoiding any adverse impact(s) to water quality. Should such monitoring indicate that unacceptable impacts occurred, corrective measures will be implemented as soon as feasible.

The Waiver requires that each national forest prepare an annual report summarizing and discussing the monitoring results by March 15 each year following the monitoring. Water Board staff will review the reports and provide each forest with comments. The comments will be discussed with each forest, and any agreed to changes incorporated into the next year's monitoring.