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Comments Via Email: ForestPlan_Comments@waterboards.ca.gov

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Division of Water Quality
State Water Resources Control Board
1001 I Street, 15th Floor
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Re: Comments on U.S. Forest Service Waiver

Dear Mr. Lee:

Thank you for the opportunity to comment on the draft Waiver of Waste Discharge Requirements for Nonpoint Source (NPS) Discharges Related to Certain Activities on National Forest System Lands in California (Waiver). This letter conveys the comments of Trout Unlimited, the California Council of Trout Unlimited, and the Carmel River Steelhead Association on the proposed Waiver.

Trout Unlimited (TU), founded in 1959, is America's largest and oldest coldwater conservation organization. TU's mission is to conserve, protect and restore native trout and salmon populations and their historic habitat in North America. TU has 140,000 members nationwide, with some 10,000 members residing in California.

The Carmel River Steelhead Association is dedicated to the restoration and protection of the native steelhead trout run on the Carmel River and other coastal streams in the South Central Coastal Distinct Population Segment of this fish.

Our organizations have a clear stake in the outcome of the Water Quality Management Plan (WQMP) and Waiver proceedings for national forest lands in California. A number of trout and salmon species - several of them listed under the Endangered Species Act -- depend on habitat in our national forests for spawning, migration, rearing, and residency. All salmonids require cold, clean water to thrive.

While we appreciate the efforts the Board has made to develop and execute an inclusive planning process, we remain concerned that the MND's consideration of major NPS discharge-causing activities is insufficient and that proposed BMPS will not succeed in preventing new and mitigating existing water quality degradation on national forest lands in California. Our concerns are laid out more fully below.

Over all, in our opinion the Waiver does not allow for consideration of local conditions in individual national forests, would allow Forest Service line officers too much discretion regarding actual implementation of BMPs and corrective actions, and fails to provide adequate guidance for line officers to make decisions related to nonpoint sources of pollution to comply with water quality standards. Perhaps most importantly, existing conditions and the history of the Forest Service's treatment of water quality degradation issues suggest the BMPs in the Plan are inadequate, or ineffective, or unenforceable. If the Waiver is adopted, activities on Forest Service lands causing nonpoint sources of pollution will continue to have a significant effect on the environment. Thus, we suggest, the MND for the Waiver is inadequate, and a more comprehensive analysis should be conducted before any Waiver is approved.

Background

The U.S. Forest Service manages some 20 million acres of land in California. 50-60 million recreational visitors each year experience a wide variety of water sources and types in national forests, and much of the lands under Forest Service management are watersheds that provide the water supply for the more than 37 million people now residing in California. According to the Sierra Nevada Conservancy, sixty-five percent of California's fresh surface water for domestic and commercial use comes from the Sierra Nevada.

Forest Service lands in California also provide habitat for many native, rare, and threatened species, including several species of salmonids and other aquatic species that are impacted by activities that cause nonpoint sources of pollution.

Watersheds on national forest lands store an enormous volume of water for recreation, agricultural, domestic, and other uses. Yet these watersheds are highly susceptible to degradation from nonpoint source pollution. In the high altitude areas of the Sierra Nevada, for example, watersheds generally consist of granitic or metamorphic bedrock with little topsoil. As a result, soil buffering capacity is very low, providing little or no retention or transformation of many nutrients.

Surface water quality and the effects of nonpoint source pollution from activities such as off road vehicle use and livestock grazing are important to many stakeholder types, including fishermen, hunters, hikers, kayakers and whitewater boaters, as well as downstream urban water districts. Much of the Sierra Nevada watershed encompasses roadless backcountry areas at high elevations that, without pollutant sources, should continue to yield excellent water quality and high quality habitat that provides recreational opportunities such as

fishing and hunting. Such areas are refuges for native trout and salmon, which require cold, clean, well-oxygenated water to thrive; such areas are becoming increasingly critical as fish habitat as climate change causes lower elevation habitat to dry up or become too warm for salmonids. One of the primary goals and effects of the Forest Service's Water Quality Management Plan (Plan) and associated Waiver should be to protect roadless areas and other resource areas with currently low nonpoint source pollutant discharges from being degraded for aquatic habitat and water quality. We are not persuaded that the Waiver, with its reliance on vague and discretionary Best Management Practice (BMPS) to respond to water quality threats, will accomplish this objective

California Environmental Quality Act (CEQA)

The proposed action is to waive waste discharge requirements for numerous activities occurring on Forest Service lands throughout California, all of which have the potential for significant impacts to water quality due to non-point source discharges of pollutants. But approval of a proposed Waiver through adoption of an Initial Study-Mitigated Negative Declaration (MND), instead of through a more thorough analysis of probable effects and alternatives for mitigation, appears to be inconsistent with CEQA because, in our view, the Forest Service's Water Quality Management Plan and associated BMPs will not avoid significant impacts to water quality. It appears to us that the MND also fails to satisfy CEQA's informational requirements, because it does not provide adequate information as to how the Plan or BMPs will ensure Forest Service activities do not cause significant impacts to water quality.

Environmental Baseline and Setting

The MND provides a summary of the environmental setting that is largely limited to a description of the physical areas that will be covered by the waiver. (MND at 21-24.) Beyond that, the MND offers only the following:

An extensive system of roads has been built on NFS land in California, especially following the end of World War II. Historically, such roads were built primarily to accommodate commodity extraction (e.g., timber, minerals, water). Today, some continue to be used as access roads, many have been converted to recreational roads or trails, while others have been closed or decommissioned. Portions of the existing road system are significant sources of sediment discharges. NFS lands are also home to extensive recreational facilities and activities. These include campgrounds, hiking and biking trails, boating docks, and trails designated for OHV use. Certain historic uses of NFS lands

may also be considered part of the environmental setting. These include existing areas of concentrated recreational use, public campgrounds, and trails. Additionally, existing grazing under long-term allotments is an ongoing NPS activity. While these activities are being brought under statewide regulation by the State Water Board with the Proposed Statewide Waiver, they pre-exist Board action and are part of the environmental baseline to be considered in the analysis. (MND at 25.)

This language does not constitute an adequate description of the environmental setting given that the Waiver is proposing to regulate these and other Forest Service activities on hundreds of thousands of acres in California according to the Plan and a long list of BMPs. Yet the MND provides no description of how these activities have been regulated in the past, nor how regulation in the form of BMPs or other tactics has historically been successful or unsuccessful. Such information is critical to an evaluation of whether proposed BMPs underpinning the Waiver are adequate to mitigate for the significant effects of these activities.

For example, the passage above indicates that the existing road system has been a significant source of sediment discharge. Yet the MND does not explain which if any BMPs were in place to regulate those roads in the past, and thus provides no regulatory baseline to understand how or whether any continuing, similar, or new BMPs will correct this historical significant impact.

The MND states that the environmental baseline for purposes of analysis is continuing degradation of water quality due to the State Board's failure to regulate non-point source polluting activities on Forest Service lands:

[M]any of the activities and impacts discussed do not require full environmental analysis because the Board action will generally improve, rather than worsen, environment quality and because many of the activities permitted under the Proposed Statewide Waiver are already part of the environmental baseline. As a regulatory action aimed at mitigating the water quality impacts of NPS activities on NFS lands, the Board action will generally improve, not worsen, the environmental impacts of such activities. At a programmatic level, the environmental impacts of NPS activities on NFS lands are expected to decrease as a result of the Board action, even if the action will permit activities to go forward with impacts at a localized project level. Additionally, aspects of this action are exempt from CEQA as procedures for protection of the environment. (MND at 25 (MND at 61 also states that existing OHV uses are part of the environmental baseline).)

We do not believe this characterization of the environmental baseline is proper and complete. The cases cited in the MND do not address when an agency proposes to adopt a regulatory program purporting to regulate future activities that will cause *future* environmental impacts. It is our understanding that the Board may not presume for the purpose of describing the environmental baseline that, in the absence of a regulatory waiver, activities that have caused nonpoint source pollutant discharges in the past would simply continue without regulation. In other words, the alternative to the proposed waiver is not continued lack of regulation but the issuance of waste discharge requirements by the Board, or cessation of the harmful activities.

Adaptive Management Strategy

The Waiver and Plan include an adaptive management strategy that lacks clear and definitive standards and thus has the potential for significant effects under CEQA. The Waiver acknowledges a lack of information about whether the Plan and BMPs will avoid significant effects. However, rather than prepare an EIR to fully analyze these effects and alternative responses, the Waiver proposes an adaptive management strategy that is supposed to lead to regulatory corrections that would continue to degrade water quality from non-point source activities.

Without a commitment to specific performance standards and triggers for action, adaptive management is nothing more than a "good faith" statement of intent to try to achieve general environmental objectives -- such as protection of water quality - over time.

In preparing the MND, the Board rejected as mitigation an adaptive management strategy that would have included specific project objectives such as avoiding sediment or other pollutant discharge above a certain level, monitoring triggers designed to determine whether those objectives were being met, and pre-defined management responses with specific timelines for action. In our opinion the two different adaptive management strategies should have been evaluated side by side in an EIR, and their relative efficacy in avoiding future significant water quality impacts should have been analyzed.

The MND provides no discussion of the types of challenges faced by the Forest Service in regulating their accompanying non-point source discharges with respect to NPS pollutant discharging activities such as grazing or off-highway vehicles. Historically, the Forest Service has been unwilling or unable to enforce existing BMPs or otherwise effectively regulate such activities so as to avoid significant water quality impacts. Such discussion seems necessary in order for the interested public to evaluate the efficacy of proposed new BMPs. For example, if shortage of funding or staffing or logistical challenges make effective enforcement of BMPs unlikely, this would undermine the

conclusion that the Forest Service's Plan will avoid significant impacts and, it seems to us, prevent the Board from approving a waiver without completing an EIR.

The MND states that "[t]here is an expectation that each forest will make reasonable progress towards completing inventories and remediating legacy nonpoint sites, especially where timely implementation is necessary for sediment TMDL compliance." (MND at 45.) However, based on our on-the-ground experience in national forest all over California, there is no reasonable basis for this expectation.

Decision-making Processes

The Plan, Waiver, and MND provide few specifics as to proposed mitigations or how any actions may in fact mitigate the adverse effects of nonpoint source discharges from activities on Forest Service lands. The documents also simply refer to other documents as support or facts to explain why proposed measures should be acceptable, but they fail to explain why that information is relevant and may support the Waiver.

The Plan states that, as to site-specific projects, the "final decision authority lies with the [Forest Service] line officer." (Plan at 15.) The Plan also states that:

Commonly, the methods and techniques for water quality protection that apply to a project site are a composite package of multiple BMPs with site-specific applications the interdisciplinary team develops. The appropriate BMPs and the methods and techniques of implementing the BMPs are included in the environmental documentation, permit, contract, or other controlling document used to conduct and administer the project. (Plan at 16.)

Nothing in these provisions of the Plan requires the line officer to choose any specific BMP, or indeed, any BMP at all. Instead, the Plan makes it clear that the line officer has complete discretion whether to choose any BMP as well as how to implement any BMP.

The Plan does not obligate the Forest Service to prepare a formal environmental analysis when it evaluates whether to issue a new permit or other authorization for NPS discharges, or to renew an expired one. Further, the Waiver does not address whether the many projects that the Forest Service categorically excludes from analysis under the National Environmental Policy Act (NEPA) affect water quality and, if so, how the Board proposes to ensure that categorically excluded projects do not contribute to the degradation of California waters.

The Plan states: "the most appropriate abatement and control measures" (Plan at 15) are variable in their efficacy. Despite this acknowledgement, the Board proposes to waive waste discharge requirements for essentially all Forest Service NPS activities. Perhaps even more troubling, the Board's proposal weakens or removes the ability of regional boards to require waste discharge requirements or adopt limited waivers that focus on specific resources and concerns in a particular region. Thus, the Waiver essentially overlooks local conditions, would allow Forest Service line officers a problematic level of discretion regarding any actual implementation of BMPs and corrective actions, and fails to provide adequate guidance for line officers to make decisions related to nonpoint sources of pollution to comply with water quality standards.

Roads

The Road Management Activities include lists of BMPs and acknowledge their importance to the Plan. Roads Management BMPs are preceded by a description of the Forest Service processes and place BMPs in context. Unfortunately, many of the BMPs for Road Management Activities lack clarity or sufficient specificity with respect to outcomes. Without criteria and without specifics the BMPs do not support the intent to protect water quality, because the actual BMPs do not have an outcome.

In the MND's section on road storage section and road decommissioning there appears to be an assumption that the practice of restoring stream crossings contributes a great deal of sediment to streams, and that this presumed impact should be carefully weighed against simply leaving the culvert in place. However, several studies have found erosion following culverts removal is minor, and results in much less sediment production than untreated sites (Switalski et al. 2004, PWA 2005, Cook and Dresser 2007). Furthermore, using straw bales (or other mitigation measures) can reduce sediment loss during treatment. Accordingly, we do not agree with the statement: "The risk of increased sedimentation from ground disturbance and exposed surfaces associated with drainage structure removal is weighed carefully against the benefits of restoring long-term hydrologic functionality." (Plan at 70.) Drainage structure removal need not cause levels of ground disturbance and sediment discharge sufficient to significantly degrade water quality; it is not an "either-or" proposition.

The Forest Service must disclose how the water quality requirements fit into the entire process of a project, to ensure that water quality protection does not become a victim of failures to address the costs of water quality protection in the initial design of the project, be it roads or road maintenance, timber projects that use the roads such as crossings, or other project proposals.

Off Highway Vehicles

The MND acknowledges that Off-Highway Vehicles (OHVs) are the most rapidly increasing source of sediment discharges on Forest Service lands that can increase soil erosion, concentrate and divert surface runoff, and damage stream banks. The Plan states:

Over the past few decades, the availability and capability of off-highway vehicles (OHVs) have increased tremendously, as has the intensity of OHV use on NFS lands. While these vehicles have provided new recreational opportunities and access to otherwise remote locations, this increase in OHV use has the potential to impact water resources. OHV use near water bodies, particularly at stream crossings, has the potential to: Deliver sediment, particularly during storm events; Cause vertical and lateral erosion of stream channels; Destroy or weaken riparian vegetation, compromising stream bank stability and increasing water temperature; Pollute waters with petroleum and chemical products and other organic and inorganic waste, including human pathogens. (Plan at 110.)

The Wavier relies on the Plan and BMPs to avoid ongoing significant water quality impacts from OHVs. However, the MND does not provide an adequate analysis of how this proposed regulatory structure will avoid significant impacts. In particular, the MND does not provide enough information to evaluate how significant water quality impacts from OHVs can be avoided in the future through reliance on BMPs.

CEQA requires a full description of the environmental setting in which the project will occur. In the MND, the environmental setting for OHV use is not adequately described. The MND provides no information about the extent of existing OHV use on roads and trails in the National Forests, except to state that OHV use is increasing or that recreational activities include trails designated for OHV use. (MND at 25.) This lack of information is significant because the BMPs rely extensively on new guidelines for planning and constructing new OHV trails as a means to avoid significant impacts in the future. However, the MND fails to discuss or acknowledge the substantial number of roads and trails that have already been approved for use the last several years on all the National Forests in California.

Since December 2008, the Forest Service has authorized over 47,000 miles of existing roads and motorized trails, with thousands of miles of new trails and routes added to the system, most of which were previously unauthorized or resulted from past illegal OHV use. The MND does not provide any information about how many miles of this extensive system constitute roads in the M-2 classification (high clearance, unpaved) or trails too narrow for road classification, all of which are used by OHVs. The MND provides no information about the extent of the existing problem - that considerable OHV travel is now occurring on existing routes that are unaffected by most of the BMPs, which are largely designed for planning and designing new routes.

Second, the MND provides virtually no required discussion of the number of OHV road and trails that are officially closed, including roads designated M-1 and numerous trails created by past illegal use that have not been authorized by Travel Management Plans. This system is also extensive. The MND also provides no information about the efficacy of Forest Service past efforts to keep OHV users off these closed roads and trails. There is no discussion of the Forest Services enforcement capabilities, its budget or plan for enforcing penalties against illegal OHV use or the degree of success such enforcement has had in the past. Instead, the MND states that the Forest Service is required to close undesignated roads and routes to any further public use by motorized vehicles. (MND at 8.) This provides the false impression that closed routes, unauthorized trails and illegal OHV use will not be a source of water quality impacts when actual field conditions demonstrate otherwise.

The MND also presents no information about how the Forest Service has addressed the problem of OHV trails and roads that have posed a threat to water quality in the past. In reality, the Forest Service has often ignored clear evidence of sediment discharge caused by OHV roads and trails due to a lack of funding, staffing or initiative. This fact raises the question of how proposed mitigation as set forth in the BMPs can be successful.

Moreover, the MND provides no information about the Forest Service's past ability to actually implement effective repair, maintenance or relocation of trails and roads in response to notice that a route is causing a significant sediment discharge, nor any information regarding the existing condition of OHV roads and trails and whether they pose a threat to water quality. This information should be available based on the Schedule G-Y-R Trail Condition Monitoring forms that every National Forest is required to use in order to be eligible for state OHV funding. The G-Y-R monitoring information would provide necessary information about the extent of existing trails that have either a yellow or red rating, both of which identify route conditions with the potential to discharge significant amounts of sediment to watercourses. Without this information, the environmental review process understates the magnitude of the OHV threat to water quality and fails to disclose the extraordinary challenge facing the Forest Service in avoiding significant impacts from OHVs in the future.

The MND fails to explain how the Waiver will apply to OHV activities that are discharging significant amounts of sediment to watercourses. Given that the MND provides no information about how the Forest Service will identify which OHV routes are threatening water quality; determine whether closure, rerouting or maintenance, and which type of maintenance will be implemented; enforce existing and future prohibitions on OHVs riding in closed areas or off trail; or accomplish necessary mitigation with limited funding and staff in the future. The MND should acknowledge that the Waiver proposes to exempt all OHV activities from waste discharge requirements.

The MND does not provide adequate information about how the Plan and BMPs propose to regulate OHV use. The details of how BMPs will be implemented in

a way that avoids significant water quality impacts is lacking from the MND or any of the other project review documents.

The Waiver proposes that significant future water quality impacts from OHVs will be avoided through the application of the Forest Service's new Plan and BMPs, which have been specifically drafted for OHVs. With all due respect, we are not convinced. Significant impacts to water quality caused by OHV use could and in fact are likely to occur in the future. The BMPs for OHVs do not ensure that significant impacts will be avoided on existing routes that have the potential to contribute significant effects. The BMPs for OHVs also fail to require closure or relocation of routes that are causing significant effects to water quality and beneficial uses. Many existing OHV routes will inevitably discharge large amounts of sediment to streams due to their close proximity to streams or their establishment on steep erosion-prone slopes. For these types of trails, typically created (often illegally) without consideration of water quality impacts, there is often no practical, feasible mitigation that can ensure that significant sediment loads are not discharged over time.

Nowhere in the BMPs is there any information about what amount of resource or trail damage, either qualitatively or quantitatively assessed, or volume of sediment entering channel, would trigger closure. As a result, there is no standard that would ensure that significant water quality impacts will be avoided. The result of continuing operation and few closures of OHV routes causing NPS discharges is likely to occur in the future because the BMPs do not actually require any action to be taken based on any measurable standard. Instead, the Forest Service allows for trails identified as "red" condition to be continually operated, while it considers various maintenance or mitigation options. To avoid significant water quality impacts, a "red" condition due to excessive erosion to a watercourse should trigger a specific management response such as immediate closure.

The OHV BMPs in the Plan state that based on this monitoring, the Forest Service shall take "immediate corrective action" for "adverse water quality effects" or where there is a "potential for substantial adverse impacts to water quality." (Plan at 122.) However, the BMPs do not provide any timetable for taking any action.

The Forest Service's inability to control OHV riding on unauthorized trails has the potential for significant water quality impacts. Yet neither the MND nor the BMPs address the adverse water quality impacts of OHV riding on closed or unauthorized trails. Instead, the project review documents all assume that the closure of a trail or road will ensure that no new water quality effects will occur. Unfortunately, this assumption is unjustified. The BMPs for OHVs have the potential to cause significant impacts, in part because they allow for future trails to be constructed on steep slopes. Even for new routes, the BMPs allow for OHV trails on slopes up to 55% steepness, or 45% where the erosion potential is high or extreme. This standard does not ensure that significant impacts to water quality will be avoided.

The inadequacies of the Plan's reliance on adaptive management strategy are underscored by the OHV issue. For an adaptive management strategy to be successful, project objectives must be: 1) specific; 2) measurable; 3) realistic and attainable (physically and economically); 4) directly related to the problem; 5) time specific; and 6) be tied to specific measurable success criteria. With respect to OHVs, this would include identifying specific objectives relating to the reduction of OHV pollution such as a measurable standard for what constitutes an OHV route discharging a significant amount of sediment and/or a specific goal of eliminating or correcting a certain percentage of those routes over a given period of time. Instead, the adaptive management strategy simply sets forth a set of planning processes, which are to ensure that a set of general goals -- such as meeting Basin Plan water quality objectives -- are being met. (See Plan at 200.)

The BMPs for OHV use provide inadequate monitoring and a lack of clear consequences for violations. The BMPs also fail to provide any assurance that unauthorized, undesignated OHV routes (that presently remain on the ground without being blocked off to prevent use) will be monitored consistently by individual national forests in order to determine if illegal use is occurring and where additional preventative actions should immediately be taken when such illegal use is discovered. The BMPs fail to require closure of broad, general OHV use areas wherever a national forest finds that it is unable to halt OHV use on unauthorized routes within that area or wherever a national forest is unable to prevent consistent resource-damaging violations of OHV regulations on legally authorized routes. Without specific, mandated monitoring requirements to be applied to all national forests in California, and without appropriate significant consequences that would be triggered by the inability of a national forest to halt OHV-generated water quality impacts, we are not persuaded that water quality will be protected.

Watershed Management

The Waiver requires the Forest Service to conduct a cumulative watersheds effect analysis and include specific measures in the proposed project to reduce potential cumulative watershed effects analysis, and to include specific measures in the proposed project needed to reduce the potential for such effects in order to assure compliance with applicable water quality requirements. (MND at 21.) Such an analysis is the responsibility of the State, is part of the State's obligations in preparing the IS/MND to support its proposed Waiver, and should not be shifted to the Forest Service.

Conclusion

Given the numerous shortcomings in the environmental analysis of the Plan and Waiver, and the lack of specific direction or requisite

actions that should be taken under the BMPs to mitigate water quality degradation, we suggest that the Board not issue a state-wide Waiver of this type. If the Board does decide to issue a Waiver at this time, it should properly and more fully consider, analyze and disclose the effects of any Waiver, and alternatives to it, in a more comprehensive analysis (EIR).

Respectfully submitted,

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