



# California Regional Water Quality Control Board

## Santa Ana Region



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**FROM:** Hope A. Smythe  
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**SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** August 24, 2011

**SUBJECT: PROPOSED US FOREST SERVICE WAIVER**

Thank you for providing the opportunity to comment on the draft US Forest Service (USFS) Waiver. We have organized our comments into general comments on the Waiver followed by more detailed comments and questions relating to specific sections within the draft Waiver.

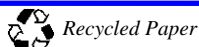
First, we have some general concerns and comments. As noted in our comment #50, we are concerned about Regional Board resources required for implementation of the Waiver. We have carefully reviewed the draft waiver and an extensive list of activities for which Regional Board staff would be responsible. As you are aware, Board staff's nonpoint source resources are very limited and would not be sufficient to support Board staff oversight of the Waiver in our region.

Second, we are concerned about the implications of the Waiver to our TMDL program. Chapter 7 of the USFS Water Quality Management Handbook deals with TMDLs. Described in this chapter is the USFS's proposed plan to prioritize restoration and TMDL activities on a statewide basis. While this is understandable from a USFS resource perspective, it is not consistent with California's approach to developing and implementing TMDLs and is likely to result in significant TMDL implementation difficulties in what the USFS considers lower priority areas. Delayed or withheld action by the USFS to address TMDLs in what the USFS considers lower priority areas is likely to result in arguments for delay by other agencies and parties that also have many competing priorities. The USFS should be held to the same expectation of prompt TMDL action, as defined in TMDL implementation plans, as other responsible parties.

### General Comments

1. Language within the Waiver should be consistent. For example, there are provisions in the Waiver that refer to non-significant impacts as well as less-than-significant impacts. Consistent expression of these elements is needed.
2. It would be useful if the Waiver contained a glossary and a list of acronyms.

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3. Given that there are many sections in the Waiver, it would also be useful to include a table of contents.
4. There should be a citation or reference to the dataset used to determine watersheds, watershed names and watershed levels (e.g., 12 digit watershed boundary dataset, 1:24:000 - NRCS). The CalWater v. 2.2 dataset used for most Basin Plans has different watershed boundaries and codes.

#### Comments on Findings

5. (Page 1, #3, 1st sentence) ...comprehensive permit coverage that provides *better* and more efficient protection... (better than what?)
6. (Page 3, #5(1)) - should this statement be clarified that the impacts to water quality are low or moderate after implementation of BMPs, Waiver conditions, etc.?
7. (Page 3, #5b(3)) - Who benefits more from prioritizing on a statewide basis - the USFS or the affected Regional Water Boards? This sentence should reflect that prioritization is a joint effort between the affected Regional Boards, the national forests and the USFS Regions; otherwise, it sounds as if the Regional Water Boards have little say in the setting of priorities.

#### Comments on Findings - USFS Guidance

8. This section could benefit from a flowchart depicting USFS guidance (include as an Attachment).
9. (Page 4, #8, 4th sentence) - Would NEPA analysis include both the Category A and Category B projects?
10. (Page 5, #11b) - How would Regional Boards know if a watershed condition assessment has been completed or scheduled for completion? (Attachment B shows that the complete assessment of all 6th-field subwatersheds would finish by 03/11 - is this the case?)
11. (Page 7, footnote 2) - throughout the document, there is reference to "designated riparian zones". This footnote specifically identifies what those are; however, in Finding #16 language specifies that the four southern California national forests have consistent requirements that are comparable to the NWFP or SNFPA and that they have all adopted supplements to FSH 2509.22 that provide protection to riparian conservation areas similar to the protection afforded through the NWFP and SNFPA. When "designated riparian zones" are specified with reference to finding #14 only, are the southern California forests excluded from these additional requirements or conditions of the Waiver? If not, then reference also needs to be made to Finding #16 each time when referring to "designated riparian zones" to include the riparian conservation areas for the southern California forests.

#### Comments on Findings - Legal and Regulatory Structure

12. (Page 11, #25d) - the correct reference to the Basin Plan for Region 8 is the Santa Ana River Basin.

#### Comments on Findings - The Statewide Waiver

13. (Page 13, #36, 2nd sentence) - this sentence is difficult to understand - what is meant by the remainder of the project?
14. (Page 13, #37a) - specifies that a project cannot be covered by this Waiver if the project may result in impacts to water quality that cannot be mitigated to less-than-significant levels. However, in Finding #33c, language specifies that the USFS reduce potential impacts to water quality to a level of non-significance. Is the Waiver requiring all impacts to be mitigated to a level of non-significance or to less-than-significant levels?

15. (Page 13, #38e) – the Waiver does not authorize application of herbicides or pesticides; however, condition 21 (page 24) states that "Each Forest shall notify staff of any affected Regional Water Board in writing at least 90 days prior to the proposed application of pesticides". In addition, the Waiver does not include language that the affected Regional Water Board needs to approve the proposed application of pesticides. We are concerned that this language is misleading as to the authorization of application of pesticides.
16. (Page 15, #44) – the Waiver indicates that Attachment B contains a schedule of actions to be implemented during the 5-year life of the Waiver; however, some actions in Attachment B show finish dates past the five-year life of the Waiver.
17. (Page 15, #45) – we are unclear about this finding. Is it the intent that this Waiver be incorporated into future TMDLs for USFS compliance? Do the State Board and USFS envision this Waiver, its conditions and the associated USFS guidance, as the regulatory tool to meet USFS obligations with respect to impaired waters? Further, and perhaps more importantly, if the "reasonable implementation" of actions by the USFS are not successful in addressing impaired waters, what is their further obligation under the Waiver?
18. (Page 15, 46a) – see #12 above with respect to designated riparian zones - should there be a reference to the southern California LRMPs and Findings #15 and 16?
19. (Page 15, 46b) - Who decides what is pre-existing anthropogenic? Is there a standard definition that is used by the USFS or each affected Regional Board?
20. (Page 15, #47) - see #12 above with respect to designated riparian zones
21. (Page 15, #48) - see #12 above with respect to designated riparian zones
22. (Page 16, #49 – last sentence) - less than significant term used here; however, under Finding #33 the term "non-significance" is used (see comment #15)
23. (Page 19, #65) –The statement that "The implementation of BMPs and on-the-ground prescriptions identified for each activity, and the monitoring of their effectiveness, will result in BPTC and will assure that pollution or nuisance will not occur.." does not match with what is stated in finding #19 (page 8) regarding the BMP Evaluation Program. Finding #19 indicates that 86% of BMPs were rated as implemented and that 89% of those were rated as effective.
24. (Page 19, #65) – the language states that the activities permitted under this Waiver have been determined to have a low impact to water quality. Yet, we note that Finding #5 indicates that the activities covered by the Waiver have a low or moderate impact.
25. (Page 19, #65) – we believe there is inconsistency between minimal or limited degradation of water quality and pollution or nuisance not occurring (if pollution or nuisance will not occur how is there minimal or limited degradation of water quality - shouldn't there be no impacts?)
26. (Page 19, #65) – we have issues with how this finding is written. This finding seems to suggest that timber and range management activities that benefit private entities should be able to discharge into high quality waters and that these activities provide maximum benefit to the people of the state. We are unclear about how this constitutes maximum benefit to the people of the state. In addition, discharges to impaired waters should only be allowed if they don't exceed the specified load allocation.

#### Comments on Statewide General Conditions

27. (Page 21, #1) – designated riparian zones (as defined by finding 14(c) and footnote 5) - these definitions are only applicable to NWFP and SNFPA. However, the text specifies in accordance with the NWFP, the SNFPA, and the southern California LRMPs. See comment #12 with respect to designated riparian zones. The text in General condition #1 should also reference Finding #15 and #16 to include the southern California LRMPs.

28. (Page 21, #2a) – see general comment #5
29. (Page 24, #23) – we are concerned that under this condition, each Regional Board would be developing their own list of exempt activities and there would not be statewide consistency throughout the state.
30. (Page 25, #24) – this condition allows the USFS to seek modification of the Waiver for unforeseen circumstances. We are unsure of what would happen if modifications are allowed. Would projects/activities not covered under the Waiver be covered by individual WDRs? Does the affected Regional Board have any input into the decision or is it strictly a State Board decision to grant the modification?

#### Comments on Category B General Conditions

31. A decision tree (included as an attachment) showing the conditions specific to different Category B activities would be helpful in determining the conditions applicable for each activity within Category B.
32. Please be consistent when describing the impacts to water quality. For example, the conditions reference the following criteria; “avoid any adverse impacts”, “to require less than significant impacts”, “non-significant impacts”, “to avoid, minimize and mitigate impacts”, “to assure that pollution or nuisance will not occur”, “unacceptable impacts”, “to prevent, minimize and mitigate discharges to waters”, to prevent, minimize, or mitigate the potential to discharge”.
33. (Page 27, 1a6) -see comment #12 re: designated riparian zones - the footnote is specific to NWFP and the SNFPA.
34. (Page 27, 1b) - see comment #12 re: designated riparian zones
35. (Page 27, 1c) - see comment #12 re: designated riparian zones
36. (Page 27, 3a) -see comment #5 re: dataset reference
37. (Page 28, #4) - if #4 is a condition of a Category B activity, aren't these activities already considered to have a moderate impact on water quality? Won't all these activities directly or indirectly affect water quality?
38. (Page 28, #5) – it is unclear about what is being required by this condition
39. (Page 29, #10) - shouldn't the project description and suggested BMPs consider this potential effect (i.e., areas within designated riparian zones that are disturbed by grazing that may result in a discharge that threatens to violate water quality requirements) in the first place and put effective BMP requirements in place?
40. (Page 29, #14) - see comment #12 re: designated riparian zones
41. (Page 29, #15) - see comment #12 re: designated riparian zones; also language states to prevent or limit impacts (see comment #35 above about consistent language)
42. (Page 30, #16) – are "Key Watersheds" defined?
43. (Page 30, #16) - roads are a significant source of sediment, and according to Finding #9 many of the roads managed by the USFS are in poor repair and the USFS does not have sufficient funding to provide the necessary road maintenance. Therefore, shouldn't the USFS limit new roads in all watersheds, not just "Key watersheds" and high risk watersheds?

#### Comments on the Waiver Application for Category B Activities

44. (Page 30, #4) - Depending on the type of project and required information to review, we do not believe that 30 days would allow sufficient time for Regional Board review, particularly for more complicated or extensive projects/activities.
45. (Page 31, #6b, #6d) - should footnote reference 8?

### Comments on Attachment G

46. Under the Project Information Box, there should be a reference to the datasets used to determine primary watershed name (see comment #5 re: dataset) and stream name (e.g., National Hydrography Dataset (NHD) 1:24,000). If using NHD dataset for stream names, please also reference the 14-digit NHD Reach Code. For future tracking of projects in a database, we believe it would be a good idea to have a list of project types for selection. Also, please include latitude and longitude (decimal degrees to 6 decimals plus the datum) of the project site or include a project boundary map or provide reference to more detailed project maps. Please also include a checklist with the items required per the Waiver (page 31, Condition #6), so that Regional Board staff can review an application and make a determination of whether an application is complete. That way there is a standardized checklist that all Regional Boards will use for assessing Waiver compliance and complete applications. Please clarify why there are two places for Stream Name(s) on Project Information box.
47. Is there an application fee? How will each Regional Board come up with necessary resources to fund review of projects and compliance with Waiver conditions?

### Comments on the Initial Study

48. (Page 6, 1st paragraph) - "The Proposed Statewide Waiver requires compliance with all applicable water quality standards, prohibitions, and other requirements set forth in applicable water quality control plans." In the Waiver, under Condition #40c2 (page 14), language states that "It is the intent of the State Board that this Waiver does not supersede the following: Any more rigorous water quality related requirements that are established by a Water Board as necessary to lead to delisting of waterbody segments listed as impaired..." It appears that these statements might be contradictory - the initial study text stating compliance with all requirements in water quality control plans, but the Waiver language stating "any more rigorous water quality requirements". Who would determine if water quality requirements established in TMDL implementation plans are more rigorous or less rigorous than the Waiver's conditions or the USFS WQMH?
49. (Page 22, 1st paragraph) - See comment #17 - Who decides who has the more rigorous water quality-related requirements (e.g., the State Board, the USFS, the Regional Board)?
50. (Page 22, 4th paragraph, item #1) - See Comment #12 re: designated riparian zones. The ACS and AMP refer to terms used in the NWFP and the SNFPA. If any riparian zone, including those in the southern California forests, is to be included, then the reference should be more general.
51. (Page 25, EXISTING CONDITIONS AND ONGOING NPS ACTIVITIES ON NFS LANDS) - Is there a cutoff date as to what is considered part of the environmental baseline and what is not? Also, are ski resorts included in the environmental baseline or where do they fit in?
52. (Page 28, Table 2, Category: Mining) - There should probably be some footnote that mining is not one of the activities included in the waiver, although the BMPs specific to mining could be applicable to other categories.
53. (Page 30, Other public agencies whose approval is required, 1st sentence) - Specifies NEPA decision making process is described above, but it doesn't appear that this process is described immediately above, so perhaps a page number referring the reader to the process might work better.

If you wish to discuss these comments, you may contact Heather Boyd at 951-320-2006 or [hboyd@waterboards.ca.gov](mailto:hboyd@waterboards.ca.gov).