



California Association of 4 Wheel Drive Clubs

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Dear Project Manager:

These comments are submitted on behalf of the California Association of 4 Wheel Drive Clubs (CA4WDC) and its membership. CA4WDC represents clubs and individuals within the State of California that are part of the community of four-wheel drive enthusiasts. These comments are directed to the *NOTICE OF AVAILABILITY FOR COMMENT AND NOTICE OF INTENT TO ADOPT Draft Mitigated Negative Declaration and Draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest System Lands in California (Revised July 18, 2011)*. This document shall not supplant the rights of other CA4WDC agents and organizational or individual members from submitting their own comments and the agency should consider and appropriately respond to all comments received to this *Draft Mitigated Negative Declaration and Draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest System Lands in California*.

While the main focus of CA4WDC is to protect, promote, and provide for motorized recreation opportunities on public and private lands, many of our members participate in multiple forms of recreation; including but not limited to hunting, fishing, camping, hiking, horseback riding, bicycle riding, and gem and mineral collection.

We recognize the positive health and social benefits that can be achieved through outdoor activities. We also recognize that motorized recreation provides the small business owners in the local communities a significant financial stimulus. And, our members are directly affected by management decisions concerning public land use.

Our members subscribe to the concepts of: 1) public access to public lands for their children and grandchildren; 2) condition and safety of the environment; and 3) sharing our natural heritage. The general public desires access to public lands now and for future generations. Limiting access today deprives our children the opportunity to view the many natural wonders of public lands. The general public is deeply concerned about the condition of the environment and personal safety. They desire wildlife available for viewing and scenic vistas to enjoy. They

also want to feel safe while enjoying these natural wonders. Lastly, the public desires to share the natural heritage with friends and family today as well as in the future. How can our children learn and appreciate our natural heritage when native species are allowed to deteriorate and historic routes are routinely blocked or eradicated from existence?

CA4WDC supports the concept of managed recreation and believes it is prudent and appropriate management to identify areas where off-highway vehicle use is appropriate. Such use must be consistent with the public lands management plans, the Plan Standards, and all other requirements found in the Plans, as well as state and federal regulations. Recreation, especially recreation off of paved or gravel roads, is the leading growth in visitors to public lands. Improvements in the planning processes help minimize conflicts and potential resource damage while providing for recreation access to public lands.

General Comments

CA4WDC acknowledges that the Forest Service is required by Federal and State law (Clean Water Act and Porter-Cologne Act) to ensure the beneficial quality of waters leaving agency managed lands. Further, CA4WDC acknowledges that applicable legislation delegates enforcement of the law to the State. Within California, the State Water Board is the agency with the delegated authority.

As noted within the Federal Clean Water Act (33 U.S.C, § 1251(g)), *“It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is the further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.”*

Congressional intent, upheld by Federal court decisions, is that the Clean Water Act shall not be used for land-use planning.

CA4WDC does have concerns that the intent of this proposed action of ensuring the **beneficial quality of waters** does not evolve into actions modifying existing water law dealing with **uses and quantity of water**; the general category of “water rights” which courts have upheld to be constitutionally protected from undue seizure under the Fifth Amendment; commonly referred to as the “takings clause”.

As noted within the Federal Clean Water Act (33 U.S.C, § 1251(e)), **“Public participation in development, revision, and enforcement of any regulation, etc.** *Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.”*

CA4WDC believes that the stakeholder process and Adaptive Management concepts outlined in the *U.S. Forest Service DRAFT Water Quality Management Handbook* provide the framework to satisfy the Congressional intent expressed within the Clean Water Act.

CA4WDC believes the *MND and Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges* is a reasonable effort by the Forest Service and State of California to comply with the enabling legislation. However, CA4WDC does have some concerns about the methodology the Forest Service is proposing to employ to implement the *U.S. DRAFT Water Quality Management Handbook* that is central to the *Mitigated Negative Declaration and the Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges*.

One point of concern is ensuring that “...ground disturbing activities on NFS lands are required to be analyzed for environmental impacts prior to implementation...” outlined within the Best Management Practices are in compliance with National Environmental Policy Act (NEPA). Before highlighting those concerns, CA4WDC would like to review NEPA to establish a frame of reference for the comments.

NEPA Review

NEPA imposes a mandatory procedural duty on federal agencies to consider a reasonable range of alternatives to proposed actions or preferred alternatives analyzed during a NEPA process. 40 C.F.R. § 1502.14; 40 C.F.R. § 1508.9. “[A]gencies shall rigorously explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14. The alternatives section is considered the “heart” of the NEPA document. 40 C.F.R. § 1502-14 (discussing requirement in [D]EIS context).

The legal duty to consider a reasonable range of alternatives applies to both EIS and EA processes. *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1325 (S.D. Cal. 1998) (citing *Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1988) (“Alternatives analysis is both independent of, and broader than, the EIS requirement.”)).

A NEPA analysis must “explore and objectively evaluate all reasonable alternatives.” 40 C.F.R. § 1502.14 (EIS); *Id.* at § 1508.9 (EA); *Bob Marshall Alliance*, 852 F.2d at 1225 (applying reasonable range of alternatives requirement to EA). A NEPA analysis is invalidated by “[t]he existence of a viable but unexamined alternative.” *Resources, Ltd. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993).

The reasonableness of the agency’s choices in defining its range of alternatives is determined by the “underlying purpose and need” for the agency’s action. *City of Carmel-by-the-Sea v. U.S. Dept. of Transportation*, 123 F.3d 1142, 1155 (9th Cir. 1997); *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815-816 (9th Cir. 1987), *rev’d on other grounds*, 490 U.S. 332 (1989). The entire range of alternatives presented to the public must “encompass those to be considered by the ultimate agency decisionmaker.” 40 C.F.R. § 1502.2(e).

The agency is entitled to “identify some parameters and criteria—related to Plan standards—for generating alternatives....” *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1522 (9th Cir. 1992) (*italics in original*). However, in defining the project limits the agency must evaluate “alternative means to accomplish the general goal of an action” and cannot “rig” “the purpose

and need section” of a NEPA process to limit the range of alternatives. *Simmons v. U.S. Army Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997) (emphasis added).

An agency must perform a reasonably thorough analysis of the alternatives before it. “The ‘rule of reason’ guides both the choice of alternatives as well as the extent to which an agency must discuss each alternative.” *Surfrider Foundation v. Dalton*, 989 F. Supp. 1309, 1326 (S.D. Cal. 1998) (citing *City of Carmel-by-the-Sea v. United States Dept of Transportation*, 123 F.3d 1142, 1154-55 (9th Cir. 1997)). The “rule of reason” is essentially a reasonableness test which is comparable to the arbitrary and capricious standard. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1150 (9th Cir. 1998) (quoting *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 377 n. 23 (1989)). “The discussion of alternatives ‘must go beyond mere assertions’ if it is to fulfill its vital role of ‘exposing the reasoning and data of the agency proposing the action to scrutiny by the public and by other branches of the government.’” *State of Alaska v. Andrus*, 580 F.2d 465, 475 (D.C. Cir. 1978), vacated in part on other grounds, *Western Oil & Gas Ass’n*, 439 U.S. 922 (1978) (quoting *NRDC v. Callaway*, 524 F.2d 79, 93-94 (2nd Cir. 1975)).

NEPA Concerns

CA4WDC concerns with respect to NEPA compliance are threefold. 1) There is lack of specificity when site-specific analysis will be determined to be Categorical Excluded, subject to an Environmental Assessment, or subject to an Environmental Impact Statement; 2) There is no consideration of “cumulative impacts” when applicable Best Management Practices are coupled with a other site-specific projects; and, 3) There is lack of clarity as to the scope of a “project”.

The discussion on Page 190 of *Draft Forest Service Draft Water Quality Management Handbook* alludes to “...most low-impact activities...” not involving “...extraordinary circumstances...” may be Categorical Excluded from the requirement to fully analyze environmental impacts. In reality, the agency has shown great reluctance to quantify low-impact activities with a Categorical Exclusion. As such, it is recommended the Forest Service adopt standard guidelines that require clear, concise purpose and need for the project that lead to definitive alternatives for the proposed action that are not “mere assertions”.

Within this WQMH discussion is the lack of consideration for cumulative impacts; both with respect to the BMPs applicable to the project and the specific projects cumulative impact on other projects without a clear nexus between them.

In other words, CA4WDC is concerned that low-impact projects could be front-loaded with BMPs and create a “poison pill” situation where the low-impact project reaches a level of significance where costly and time-consuming efforts are required that do not contribute to the stated goal of ensuring quality of water for beneficial uses. As defined in the WQMH, the BMPs are intended to be management prescriptions for projects. As such, the implementation of the BMPs should be routine in nature and not require extensive review prior to implementation.

And, overall, there is uncertainty as to what activity qualifies as a “project” within the scope of the WQMH as discussed on Pages 191-192 of the WQMH. Some of the uncertainty rests with the mixed use of terms “activity” and “project” throughout the applicable documents. The overall proposed waiver alludes to application to “certain activities” on NFS lands. And, the documents consistently refer to “projects”. As such, CA4WDC recommends that the *Draft Forest Service Draft Water Quality Management Handbook* and related documents undergo a review for

consistency of use of the terms “activity” and “project” and provide specific guidance to correctly quantify applicability of the WQMH.

CA4WDC is concerned with the scope of the terms “eco-system” and “watersheds” that appear frequently in the *MND* and *Draft WQMH*. The term “eco-system” is nebulous and can be construed to be wide-ranging and inclusive of many things without a clear nexus to the “nonpoint source discharge” that is subject of the *MND* and *Draft WQMH*. And, “watersheds”, while easier to define with logical geographic boundaries, again is a nebulous term and can be construed to be inclusive of many things without a clear nexus to the “nonpoint source discharge” that is subject of the *MND* and *Draft WQMH*. CA4WDC recommends that the term “eco-system” be removed from the documents and clarity with respect to “watershed” be provided to establish clear delineation of boundaries where applicable. This is important within the context of a monitoring program and within the definition, interpretation, and application of appropriate Best Management Practices.

CA4WDC has reviewed the proposed *Draft Mitigated Negative Declaration and Draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest System Lands in California (MND)* and the *U.S. Forest Service DRAFT Water Quality Management Handbook*.

Comments are provided on both documents; Section I and Section II, respectfully.

Section I

Comments relevant to the INITIAL STUDY AND PROPOSED MITIGATED NEGATIVE DECLARATION

Page 18:

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

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

The discussion provided for Categories A and B indicates the Proposed Statewide Waiver limits coverage to activities that pose low or moderate risk to water quality, and it imposes additional specific conditions, as well as Regional Board review, on those that pose moderate risk.

It is clear that Category A applies to low risk activities and Category B applies to moderate risk activities. However, it is not clear how these relate to the eight activities listed in the **PURPOSE OF AND NEED FOR PROJECT** section. And, it is not clear how these categories relate to the activities described on the *Draft USFS Draft Water Quality Management Handbook*.

Continued discussion on **Page 69** reveals:

General and specific conditions are identified for the approved activities. For Category A activities, no additional application or special conditions are required.

The description for Category A on **Page 18** notes that “... *no additional specific conditions...*” apply; while the text on **Page 69** states that “... *no additional application or special conditions are required.*” For clarity, recommend that the phrase “... *no additional application..*” be inserted in the **Page 18** description.

Also, there is a lack of clarity as to whether the caveat “... *no additional application...*” applies to a State or Federal requirement. For purposes of clarity, recommend that the Category descriptions be annotated as to whether the reference is to State and Federal applications or additional specific conditions as appropriate.

Additionally, there is a lack of clarity as to how Categorically Excluded projects/activities will be treated within the scope of the MND Categories A and B.

Recommend that verbiage of MND Categories A and B be reviewed to determine if a U.S. Forest Service project/activity with a Categorical Exclusion would fall into the Category A - low risk definition.

Page 21:

Each forest is required by the Proposed Statewide Waiver to prepare an annual report summarizing and discussing the monitoring results by March 15 each year following the monitoring.

The paragraph establishes that an annual report will be developed. However, it is lacking a reference to describe the specific content, format, and distribution of the report.

Page 70: (first sentence, second paragraph)

The Proposed Statewide Waiver requires that USFS reasonably implement all of the foregoing, as well as its own numerous conditions.

The discussion preceding this paragraph covers the Tiered documents that apply. However, the phrase “... *as well as its own numerous conditions...*” adds ambiguity to the guidance that applies. Recommend that the phrase be modified to indicate “appropriate” or “applicable” conditions.

Section II

Comments relevant to the U.S. Forest Service DRAFT Water Quality Management Handbook.

As this proposed Mitigated Negative Declaration (MND) moves forward, CA4WDC recommends the following changes to the Draft WQMH:

Chapter 3: Administrative Processes for BMP Implementation

Page 189;

6) *A public stakeholder and tribal advisory group will be established and will meet annually with the Forest Service Regional Office and the State Board to discuss any issues of concern related to water quality on NFS land. The stakeholder and tribal advisory group will be provided with all monitoring plans and reports, and the group will participate in field reviews of selected Forest Service activities on an annual basis. The stakeholder and tribal advisory group will select the activities to be reviewed. This group, its meetings, and the field reviews will be arranged and coordinated by the Forest Service Regional Hydrologist with assistance from the Regional Forester's Liaison Officer and Public Affairs staff.*

The paragraph describes public stakeholder and tribal advisory group involvement. One key ingredient missing is ensuring that the public stakeholder and tribal advisory group members are afforded the opportunity to receive training as described in WQMP Paragraph 3) Interagency (Forest Service-Water Board) training sessions.

Paragraph 6) identifies a significant role for the public stakeholder and tribal advisory group. As such, they should be afforded the opportunity to participate in training sessions that keep them current with issues involving BMP development, implementation, and monitoring.

Page 191: Project Implementation

The lead paragraph states:

"Projects on NFS lands are implemented through contracts of various types, permits, and using Forest Service (force account) staff. Protection of water quality depends on a complete and accurate transfer of the site-specific BMPs described in NEPA decision documents into contracts, permits, and force-account job specifications."

This section describes six implementation categories. It is not clear where the "Recreation" BMPs fall within the categories described; yet, the "Recreation" BMPs are very detailed in their descriptions.

Recommend that language be developed that describe conditions and bounds for the implementation of Recreation BMPs.

Chapter 4: Adaptive Management

Page 195; First paragraph

*1) Improve the speed and certainty with which problems and **threatened** problems caused by a project are identified and corrected, so as to minimize water-quality impacts that may have already begun, and to prevent future impacts.*

Recommend the word "threatened" be replaced with "potential".

Page 195: Last paragraph

The last paragraph contains the sentence:

“Stakeholders and tribes can also submit data and observations related to their own project or watershed-scale monitoring, according to the process described in Section VIII of this chapter.”

The reference in the paragraph is to additional detail contained in “Section VIII”. However, the chapter (nor document) does not contain a Section VIII.

Page 199; PLAN--Identify risk and uncertainty

Middle of first paragraph; sentence:

“However, we recognize that more will need to be done,...”

There is a verb tense structure issue that needs to have “be” added. The sentence should start: “However, we recognize that more will need to **be** done,...”

Middle of page:

Continue to investigate the performance of the Forest Service Region 5 BMP and BMPEP program and identify its strengths and weaknesses and need for change. Implement an independent evaluation of the BMPEP to assess the reliability and statistical robustness of results obtained using the current program.

The paragraph refers to an “independent evaluation”. However, it is unclear from the text as to how the independent evaluation will be conducted. A caveat needs to be added that will outline the qualifications of the evaluator performing the independent evaluation.

Investigate the performance of the current Stream Condition Inventory (SCI) program, and identify its strengths and weaknesses. Conduct synthesis and BMPEP reliability evaluation in consultation with stakeholders and tribes, and collaboration with research professionals from outside institutions. Frame the discussion of risks and uncertainties in a statewide context, as well as Forest- specific context.

This paragraph has two problematic points:

- 1) The term “...research professionals from outside institutions...” is used and lacks clarity as to how they are qualified to conduct the action of “...Investigate the performance...” at the expense of an independent evaluator.
- 2) The sentence “Frame the discussion of risks and uncertainties in a statewide context, as well as Forest- specific context.” is an incomplete sentence and does not contribute to understanding the intent of the paragraph.

This paragraph, along with the previous paragraph, outline a process to obtain an analysis of BMPEP performance and reliability. Those actions should be couched in terms of seeking an independent evaluation/analysis. As such, qualifications and criteria for conducting the evaluation should be consistent with both actions.

Page 200: Plan--Conceptual model and key monitoring questions

- 1) *Are Forest Service practices adequate for protecting water quality at the project scale (BMPEP effectiveness monitoring and retrospective BMPEP) monitoring?*

Formatting error: The parenthesis should be moved from after BMPEP to be after monitoring...

- 4) *Are water-quality conditions trending upward or downward on NFS lands (in channel monitoring)?*

Recommend that this point be qualified with a known baseline reference point to determine upward or downward trend based on a fixed reference point.

- 6) *Are **key areas** with **high recreational use** protected from bacterial contamination (rangeland in-channel fecal indicator bacteria (FIB) monitoring)?*

This statement is subjective and leaves in question:

What criteria are used to define “key areas”?

What criteria are used to define “high recreational use”?

How is “high recreational use” quantified?

Recommend that language be developed that define baseline reference points to quantify the risk aspect determine the appropriate monitoring technique to employ.

Page 203: ACT—Short-term corrective actions, reporting, and recommendations or decisions for programmatic change

- 1) *Identify problems through systematic monitoring and research synthesis. Include input provided by Water Board staff, stakeholders and tribes;*

Recommend inserting “potential” between “Identify” and “problems”. Problems cannot be pre-determined and must be quantified by supporting data.

Page 204: Response procedures for monitoring program components

- 1) *Annual BMP implementation checklist discrepancies. Discrepancies are instances when BMPs implemented on the ground **does** not match what was stated in project planning, contract, or permitting documents.*

In above paragraph, the word “does” should be replaced with “do”.

- 2) *Annual random BMPEP monitoring implementation failures*

- 3) *Annual random BMPEP effectiveness failures*

- 4) *Retrospective BMPEP effectiveness failures*

Within the above paragraph headings, there is a lack of clarity as to how the “failures” are determined. Recommend they be clarified with verbiage as to how the failure is quantified/determined.

Page 206; first paragraph, top of page.

The term “FIB” is used and does not appear in the glossary. As it is used several times throughout the document, recommend that it be clearly defined within the glossary.

Reporting; BMPEP and Watershed Monitoring

Under Chapter 3: Administrative Processes for BMP Implementation, Page 189, roles of stakeholders and tribal groups are laid out for participation. The section on Page 206 provides for meetings that appear to fall within the roles defined on Page 189 for stakeholders and tribal groups. The paragraphs on Page 206 should be modified to provide for stakeholder and tribal group participation in the meetings.

Page 207: Field Reviews

Annually complete a field review to visit and discuss implementation and effectiveness monitoring results. Forest Service and Water Board staffs should organize this event and locations should change each year. Stakeholders and tribes should be invited and may be asked to help select the sites for field visits. Results of BMPEP evaluations should be discussed at these events. Areas of non-compliance or ineffective BMPs should be included on the field visits.

The above paragraph defines specific actions that are to be accomplished. However, the word “should” is used. While stakeholder and tribes participation is discussed, the use of the word “should” does not uphold the intent of the document to engage public involvement. Recommend replacing the word “should” with “shall” where it occurs within the paragraph.

Page 207: Executive Management Decisions

Bottom of first paragraph:

This should be done at least a few months before the CEQA process for waiver renewal is to begin. More time may be needed if decisions made are controversial.

The phrase “...a few months before...” needs to be qualified with a definitive timeframe such as “...at least six months before...”.

Page 208: First paragraph, top of page

Sources of information used to determine failure would include all of our own monitoring programs and information from external observers, including Regional Boards.

The above sentence contains the phrase “...all of our own...” in reference to information pertaining to monitoring programs. The phrase needs to be qualified as to the exact source of the data rather than a nebulous, non-descriptive source.

The second sentence of the first paragraph is:

Based on this information, the Forest Service would make a determination as to whether we actually had a consistent failure for an individual project or an activity that resulted in violation of Basin Plan standards.

The word "...we..." needs to be quantified as to the exact Responsible Officer that will make the decision about the consistent failure.

Page 208: Stakeholder and Tribal Consultation

The role of a stakeholder and tribal advisory group is described in chapter 3 of this handbook.

A review of the role of stakeholders and tribal advisory groups are noted in generalities which indicate they will have a role. However, there are no clear responsibilities outlined nor direction as to how they will participate. Recommend that additional verbiage be developed to define responsibilities and limits of activities that are within the scope of the stakeholders and tribal advisory groups roles. Part of the clarity needs to clarify the participation intent to be advisory or consultation in nature.

Page 209: CHAPTER 5: WATERSHED PRIORITIZATION FOR RESTORATION Paragraph 5; first two sentences

The Forest Service approach to watershed improvement and restoration follows the principle of conservation biology to "protect the best, restore the rest." This approach is likely to be strongly supported in the future by the Forest Service national headquarters.

The first sentence begs the question of appropriateness based on the list noted in Chapter 1, Page 6:

Forest Service Authorities

As a Federal agency, the Forest Service is bound by Federal laws, Executive orders, and Department of Agriculture directives, which are the basis for Forest Service programs and operations. Federal laws and Executive orders of direct and specific application to water-quality management include the following:

The second sentence is presumptive in nature and should be stricken from the document as it is opinion based and not relevant to point of law listed under the Forest Service Authorities.

Page 211: Priority Watershed Selection

Third paragraph;

Information provided by the State and Regional Boards and other partners (local, State, tribal, other Federal agencies or interest groups) will be considered in the priority watershed identification process. The public will be given opportunities to provide suggestions for selecting priority watersheds during the development of forest plans.

This paragraph describes a government function with solicitation of input from non-government organizations and the public. Input from the public is qualified as being within the framework of

development of forest plans. However, input from interest groups (also members of the public) are invited within the framework of State and Regional Boards and other partners (local, State, tribal, other Federal agencies). Recommend deleting “interest groups” from the list of government entities. “Interest groups” are members of the public and should have no special consideration outside the opportunities afforded to the general public.

Chapter 6: Monitoring

Page 216

6) Schedule G-Y-R Trail Condition Monitoring so high-risk and high-maintenance trails are monitored annually; schedule the monitoring of stable trails less frequently, but not less than every 3 years.

What criteria are used to define “high-risk and high-maintenance trails”? In addition, the term “monitored” needs to be defined as to the data required to be collected and/or observed during the monitoring activity.

7) Monitor a 2 percent sample of trails each year using the Trail Assessment and Condition Survey (TRACS) protocol.

There needs to be a qualification of how the “sample” will be determined. Recommend that “random” be inserted prior to the word “sample” so that the sentence reflects that a **2 percent random sample of trails** will be monitored.

In addition, the term “monitored” needs to be defined as to the type of data required to be collected and/or observed during the monitoring activity.

CHAPTER 7: TOTAL MAXIMUM DAILY LOAD IMPLEMENTATION

Page 224: Minimizing Adverse Effects of Current Activities

The Forest Service will evaluate potential adverse water-quality effects of all proposed projects in watersheds with total maximum daily loads (TMDL) through NEPA. No alternatives that have significant potential adverse effects on water quality will be selected in NEPA decisions.

For the sake of clarity, this paragraph should reflect that the waiver allows for activities with mitigated actions to be conducted. It stands that during a NEPA process, an alternative may be created that contains an activity with mitigated actions. So, a clarity of process needs to account for a method to determine activities with mitigated actions verses an activity that may have significant potential adverse impacts. And, whether mitigation can reduce the significant potential adverse impacts.

Chapter 8: Needed Future Actions

Page 227: Monitoring

The Forest Service Regional Office will prepare a Quality Assurance Project Plan for the monitoring program. In 2011, each national forest will determine its baseline monitoring network for in-channel monitoring. Each forest will also develop sample pools for retrospective BMPEP evaluations.

Previous descriptions of monitoring indicate more than in-channel monitoring will be implemented. While it is appropriate for each forest to determine its baseline monitoring network, it should do so with caveats that determine the selected sites will be viable in determining overall watershed health rather than to pin-point suspected issues.

With respect to the final sentence, each forest will develop sample pools for retrospective BMPEP evaluations. Recommend that the "sample pools" be clearly defined and that sampling be done based on a randomization process to select candidates for the pools.

Sincerely,

A handwritten signature in black ink, appearing to read "John Stewart". The signature is fluid and cursive, with a large initial "J" and "S".

John Stewart
Natural Resources Consultant
California Association of 4 Wheel Drive Clubs