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Department of
Agriculture

Forest
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File Code: 2530

Date: August 19, 2011

Gaylon Lee
Forest Activities Program Manager
State Water Resources Control Board
1001 I Street
15th Floor
Sacramento, CA 95814



Dear Mr. Lee:

The USDA Forest Service Pacific Southwest Region offers the attached comments on the proposed statewide waiver for activities on National Forests in California. The comments were compiled from individual comments submitted by staff of the Regional Office and National Forests in the Region.

Our primary concerns with the proposed waiver are:

1. The waiver does not include a provision for projects to be “deemed approved” if a Regional Water Quality Control Board review is not completed within the specified 30-day review period. Adherence to the 30-day review requirement will be critical for many projects on the National Forests.
2. Criteria for disapproval of waiver enrollment are not specified.
3. An additional waiver condition is needed to allow National Forest line officers to request letters of concurrence from Regional Water Quality Control Boards for one or more alternatives under consideration prior to waiver enrollment.
4. The monitoring and reporting program for the proposed waiver should be consistent with both the Forest Service Water Quality Management Handbook and the North Coast Regional Water Quality Control Board waiver monitoring and reporting program (Order No. R1-2010-0029).



I appreciate the leadership and the efforts of the State Water Resources Control Board and its staff in developing the waiver and related documents over the past 2 years. The waiver, in conjunction with our Water Quality Management Handbook, will improve protection of water quality on National Forest System lands in California, and will lead to improved understanding of the effects of forest management activities on water resources. I look forward to working with you in the future to implement the waiver.

Sincerely,

/s/ Daniel J. Jirón (for)

RANDY MOORE
Regional Forester

Enclosures

cc: gkle
Barry Hill
Michael Landram

USDA FOREST SERVICE PACIFIC SOUTHWEST REGION COMMENTS ON DRAFT STATE BOARD WAIVER

Prepared August 17, 2011

Draft Waiver

p. 1, finding 2: Revise first sentence because it is not legally correct. When it states, “By statute, USFS must manage NFS lands for multiple uses” – the term “manage for multiple uses” refers to the Multiple-Use Sustained-Yield Act of 1960. The accurate statement from 16 U.S.C. 528 is “It is the policy of the Congress that the National Forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.” Therefore, the first sentence of finding 2 should read: “By statute, USFS must manage NFS lands for multiple uses, including outdoor recreation, range, timber, watershed, wildlife, and fish purposes.”

p. 2, finding 4, Road Management: The effects of road decommissioning are stated to be equivalent to road construction and use. While road decommissioning can have adverse effects to water quality, the effects are usually much smaller and of less duration than road construction and use. Add “on NFS lands” after “Forest roads” in the third sentence.

p. 2, finding 4, Vegetation Manipulation: Pesticides are mentioned as potential pollutants but are not covered under this waiver. Delete reference to pesticides here and clarify that the only required permits for pesticides are the appropriate NPDES permits for activities that meet permit criteria.

p.2. finding 4, Vegetation Manipulation: Riparian area rehabilitation is stated to have as one objective the promotion of conifer species. Riparian restoration may also be undertaken to encourage growth of broadleaf riparian species such as aspen, cottonwood, and willow.

p. 4, finding 8: This finding suggests that entire NEPA documents are to be submitted for waiver enrollment, whereas the waiver enrollment requirements (item 6 on p. 30-31) indicate only specific relevant portions of the analysis documents need be submitted.

p. 4, finding 9: Eliminate reference to insufficient funding for road maintenance, or change to say that the USFS “may not” have adequate funding. Specify that the roads and trails described in this finding are NFS roads and trails.

p. 5, finding 11b.: The USFS watershed condition assessment is now complete, and is formally called the Watershed Condition Framework.

p. 7, finding 15: Edit to read “The NWFP and SNFPA ~~control~~ **amended and are a part of** the LRMPS of the individual national forests within their respective geographic areas.”

p. 7, finding 16: Add “requirements” after SNFPA in the second sentence.

p. 10, finding 22. b. 1.: Clarify that the roads discussed in this finding are NFS roads.

p. 13, finding 35: Clarify that these activities are covered by the waiver whether conducted by USFS staff, contractors, or permittees, including special use permittees.

p. 13, finding 36: Add item d. to specify that discharges from mining operations are not covered by the waiver.

p. 13, finding 38: Clarify that herbicide applications that do not meet criteria for NPDES permits do not require additional permits beyond the waiver notification requirements.

p. 14, finding 39: Delete "It is the intent of the State Board..." so that the first sentence begins "This Statewide Waiver will apply to all NPS activities on NFS lands...".

p. 14, finding 41: Delete this finding, as no Region-specific conditions are included in the waiver.

p. 14, finding 42.b: Change "may result in impacts to water quality" to "may result in impacts to beneficial uses" or "may result in exceedance of basin plan objectives." Change "comply with WQ requirements" to "comply with waiver conditions." Criteria for disapproval of waiver enrollment should be specified.

p. 15, finding 47: The Southern California Forest Plan does not specify riparian protection zones for ephemeral streams, but ephemeral streams are protected in project level NEPA.

p. 15, finding 48 c: In this finding, either a watershed restoration plan or an inventory and prioritization of legacy sites is considered adequate to avoid project-specific legacy site restoration requirements. However, on p. 29, Category B condition 5, only watershed restoration plans are mentioned. Clarify that inventories and prioritizations are acceptable to rely on watershed-scale restoration as opposed to project-level restoration.

p. 16, finding 51: Clarify that third parties working under contract or permit with the USFS are subject to enforcement if they violate the terms and conditions of contracts or permits and cause discharges of pollutants to waters of the state.

p. 16-17, findings 52 and 53: Specify the party or parties with authority to terminate waiver enrollment and the criteria for termination.

p. 17, finding 59: In addition to wildfire suppression and restoration, emergencies may result from storms, floods, landslides, and illegal activities. These emergencies should be included in findings 59 through 62.

p. 18. Emergencies, Item 61, Emergency repairs to public facilities when a state of emergency has been declared by the governor: This is helpful, but we question if should it be limited to governor declared emergencies. What about other emergency repairs to facilities like a localized storm that takes out a section of road that prevents access to private lands? Or that prevents access for powerhouse operation? Or for contractors to get to worksites, etc. .? If there is no emergency need to reopen we

can wait, however obtaining a waiver to fix these kinds of problems seems burdensome and an unnecessary delay.

p. 21, General Condition 1, footnote 5: For Southern California forests, the appropriate reference would be Appendix E - Five Step Project Screening Process for Riparian Conservation Areas . Ephemeral streams are not mentioned.

p. 21. Statewide General Conditions - Applying to all Category A & B Projects: Items 2-4 are program objectives that should not influence individual projects, especially category A. These items should be in a different place in the waiver.

p. 21, Statewide General Condition 2: Clarify that Category A projects have no project-level restoration requirement if conducted in a watershed without a watershed restoration plan.

p. 22, Statewide General Condition 6: Rather than requiring each forest to invite Regional Board staff to review individual projects, state that Regional Board staff may participate in reviewing any proposed USFS activity for which the USFS plans to seek waiver enrollment.

p. 23, Statewide General Condition 10. a. 3.: Edit to read "A provision stating that the contractor, grazing permittee or other ~~responsible~~ **third parties specified in this Waiver** are subject to this Waiver, specifically general conditions 13 -15."

p. 25, Category A, items 3 and 4: Change "hazard tree" to "danger tree."

p. 25, Category A, item 10: Include signpost installation.

p. 26, Category B, item 8: change "road upgrading" to "road improvement."

p. 26, Category B: Add item 14, non-emergency and non-routine road repairs (for example, slide removal or road slipout) such as from storm-related events with potential to impact water quality.

p. 28, Category B, item 9: Change "30%" to "50%" per BMP 2.13, which was developed collaboratively with Water Board staff (see WQMH p. 91).

p. 30, waiver application for Category B activities, item 1.: Change "Notice of Intent" to "Notice of Application" to avoid confusion with the Notices of Intent submitted by mine operators to USFS district rangers.

p. 30, waiver application for Category B activities, item 4: If the waiver does not include a provision that projects are "deemed approved" if a Regional Board review is not completed in 30 days, adherence to the 30-day review period on the part of the Regional Boards will be critical for many USFS projects.

p. 31, Waiver application for Category B activities: Add as item 8 that the USFS can request a letter of concurrence for one or more alternatives considered in the NEPA analysis so that the line officers can have documentation that the selected alternative will comply with the Clean Water Act before signing a FONSI or ROD.

General Comment on Waiver: Throughout the draft waiver there are references to various required reports. It is not clear if there are expectations for multiple reports or if it all can be consolidated into one an annual report and deadline. One report would be preferred with all of the expectations summarized in one place – preferably in Attachment C –the Waiver Monitoring and Reporting Program.

- Page 5. Item 10 – asks for an annual WIP report, no deadline. This item is not specified in Attachment C - but should be incorporated there and referenced in the waiver. It is not presently found in Attachment C.
- Page 8. Item 18 - refers to USFS “periodic” BMPEP reporting. Annual reporting is the requirement and expectation, “periodic” may reflect our reporting history however that sentence should be scratched; it adds no value.
- Page 24. Item 18 asks for an annual report with no specific deadline on ...”status of any work set forth in the schedule of future actions...”. Again this requirement should also be apparent in Attachment C Monitoring and Reporting. Either incorporate into this document or omit it entirely.
- Page 25. Item 27 – asks for notification of discharge within 48 hours and a written report within 14 days of notification. This isn’t reinforced in Attachment C he but again should be there.
- Page 29. Item 10- asks for reporting within 10 days of discovery of grazing damaged riparian areas - Again this is not in Attachment C & should be there
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General Comment on Waiver: The Travel Management Rule created new definitions for “roads” on NFS lands. When the waiver uses “Forest roads”, does that correspond to the new definition? “NFS roads/NFS trails and areas on NFS lands,” on the other hand, generally refer to that subset of routes that are designated as open to public motor vehicle travel.

Attachment A, BMP Crosswalk

p. 7, MM 2C: Component 6 refers to BMP 2.2, Erosion Control Plan. Change to BMP 2.13.

Attachment B, Schedule of Future Actions

p. 1: The attachment refers to new databases, however, some databases already exist:

- In-channel Monitoring Results are in [NRIS AQS \(Aquatics\)](#).
- Watershed Improvement Inventories are in [NRIS WIT \(Watershed Improvement Tracking\)](#)
- Watershed Improvement Tracking also in [NRIS WIT \(Watershed Improvement Tracking\)](#)
and in [NRIS WCATT \(Watershed Condition Assessment Tool\)](#)

Attachment C, Monitoring and Reporting Program

General comment—please see attached comparison of proposed monitoring in the USFS WQMH, the North Coast waiver, and the State Board waiver, and the suggested compromise approach.

p. 1., Paragraph 2 Under Monitoring and reporting Requirements: “For Watersheds in which the in channel long term monitoring is not conducted...” There appears to be some issues of scale that need to be addressed.

- Project triggered monitoring that requires additional in-stream and non-random BMP monitoring is certainly not appropriate at a Watershed (5th field) scale, but would be more appropriate at a Drainage (7th field) level.
- In channel monitoring please strike out “At lowest end of watershed”. Again watershed refers to 5th field hydrologic units even if this is not the intention it adds confusion. Keep the description of how to do this monitoring in section 2A.

p. 1: In the WQMH, the retrospective BMPEP monitoring is included in the watershed-scale baseline monitoring and not the project-level monitoring. Change the requirement for retrospective BMPEP to the watershed-scale monitoring (or all past BMPEP evaluations rated as Effective).

p. 1: “Road patrols after major storms” should refer to 1.A.2c, not 1.A.2b.

p. 1: The most recent version of the SCI protocol is dated 2005, and this version should be referenced in place of the 2002 version. We will update the reference in our WQMH also.

p. 2. Item 1.A.1. Last sentence. Consider adding these words...“during or” after project implementation. Inspecting the work during operations is much more effective than waiting until after contractors and equipment are gone.

p. 2. Item 1.A.2.a. Last sentence. Strike “Not fully implemented” and limit the revisits to areas found to be less than fully effective. If failure to implement was the issue it will be picked up. If failure to implement was substituted or found to be unnecessary and water quality was protected, there is no point in revisiting.

p. 2. Item 1.A.2. b. The last line on that page refers to the “project watershed” even though this is the “USFS Wide Monitoring”, not the “Project Triggered Monitoring”, so there shouldn’t be an associated project. We suggest the following rewrite....

Retrospective hillslope monitoring of past management activities will be included in the BMPEP. Forests will randomly select a sub-watershed (6th field scale) and select all effective BMP evaluations from the last 5 years for all timber, engineering, and grazing projects. At least one evaluation from each of these resource areas will be randomly selected and re-evaluated to compare to original BMPEP effectiveness scores to determine if BMPs remained effective over a period of years.

p. 3, 1.A.2c.: change to “and road conditions and availability of personnel during and after major storms...”

p. 3, Item B, second Paragraph, first sentence: “Because USFS resources are limited; this type of monitoring will be restricted to a relatively small number of watersheds and sites.” Contradictory

requirements are made on the next page where project triggered monitoring appears to require that every 6th field sub-watershed needs to have in-stream monitoring completed.

p. 3, item B.3: The proposed MRP differs significantly from the current version of the monitoring chapter in the WQMH and the draft North Coast waiver MRP. The current draft of the WQMH monitoring chapter, and the draft North Coast waiver MRP, call for baseline in-channel monitoring to be conducted in two 6th or 7th field subwatersheds nested within each 5th field watershed. One of the subwatersheds would be a reference subwatershed as defined by the SWAMP criteria, and the other would be an intensively managed subwatershed. Both subwatersheds would be monitored once every 5 years. We no longer plan to use watershed condition class to stratify the sample locations. The MRP for the waiver should be consistent with the WQMH and North Coast waiver MRP.

p. 3, item B.4: "If SCI results indicate adverse impacts..." Interpretation of the SCI results is not simple and much work is needed to determine appropriate range of variability for reference watersheds. Requiring a restoration plan to fix watersheds that are exhibiting adverse effects in the stream channel is a poor time to begin restoration. In addition, an inventory or restoration may already have taken place. Instead of developing or implementing new plans, it might make better sense to require new inventories of causes for decline in instream conditions and then consider feasible approaches to address the issues. Perhaps consider it a "Priority" for consideration in future investments. Sometimes the places in the poorest condition are also the poorest investment. Cost benefit exercises are critical in these situations.

p. 4, item B.6. The added stipulation of monitoring shade using Solar Pathfinders adds little value. SCI protocol requires this already. One time measurement of solar Pathfinder is highly variable and would be unlikely to provide particularly meaningful data. We request that this requirement be deleted.

p. 4., item 2: The current draft reads: "For projects in watersheds at the 6th field scale (as defined in NRCS 2007s) that lack the In-channel Beneficial Use Monitoring (Item 1.B., above), the following monitoring will apply..." Please rewrite this to say..."Projects that do not have an instream monitoring location within the same 5th field watershed will have to complete the following monitoring ..." We need to be able to rely on data from nearby sub-watersheds nested within the same 5th field watershed.

p. 4. item 3, Rangeland Monitoring: The pilot study on the Stanislaus is mentioned in 2010, however it should also be mentioned this is being duplicated on 192 sample sites on 15 allotments on the Shasta Trinity Plumas, Tahoe, and Klamath National Forests in 2011.

p. 4., item 3.A. Clarify in the second sentence that "within each allotment" refers to each allotment selected for monitoring as described in the first sentence of 3.A..

p. 4, item 5: Non-random "nested" BMPEP monitoring in the WQMH is included with project-level monitoring. Non-random BMPEP monitoring will be much more effectively compared to in-channel monitoring results under project-level monitoring, because each project will have an in-channel monitoring site under project-level monitoring.

Attachment D-MOU

p. 1, 1st paragraph: add “collectively referred to as ‘the parties’” after “Pacific Southwest Region.”

p. 2, item 4.a.: edit as follows: Pursuant to the State Board’s Nonpoint Source Implementation and Enforcement Policy, State Board Resolution 2011 - ----- has adopted a statewide waiver of waste discharge requirements (Waiver) for the NPS activities specified and covered in the Waiver and covered by the USFS WQMH, the chief condition of which is reasonable implementation of the WQMH by USFS.

p. 2, 1.a.: Under “the USFS agrees to...”, insert “in the waiver and” before “by the WQMH.”

p. 2, 1.b.: Insert “Amendments” after “Northwest Forest Plan.”

p. 3, 2.: Under “the State Board agrees to...”, the subsequent items should be lettered instead of numbered for consistency with the USFS agreements.

p. 3, 2.9.: Eliminate this item referring to a stakeholder group. The USFS will convene a stakeholder and tribal group, and State and Regional Board staff will be welcome to participate, but the USFS is willing to take full responsibility for establishing and coordinating this group.

Attachment F – Grazing Rescission Schedule:

p 2: Annual Operating Instructions **do not necessarily** implement NEPA decisions. The NEPA decision is implemented through the Allotment Management Plan and Term Grazing Permit. Annual Operating Instructions are issued when it is desirable to adjust management within the scope of the NEPA decision to achieve desired outcomes, adapt to changing conditions, or otherwise implement adaptive management that may be part of the NEPA decision.

p. 3: Clarify that Annual Operating Instructions are optional documents that are only needed when the current permit and Allotment Management Plan do not address changing situations.

p 3: Clarify that the Rescission Schedule is subject to modification at the discretion of the Forest Service based on prioritization of the program of work, budget constraints, and data collection and analysis needs.

p. 4: Clarify that the BMP Evaluation Program measures effectiveness based on outcomes that may or may not be within the control of management and that a determination of “ineffective” may or may not have anything to do with grazing management.

Attachment G

Signature should read "USDA Forest Service" in place of "USFS."

COMPARISON OF PROPOSED MONITORING PROGRAMS

Alternative	Component	USFS WQMH	NC MRP	State Board MRP
<i>Common to all projects and all watersheds</i>				
	<i>BMP checklists</i>	All projects	All Cat. B projects	All Cat. B projects
	<i>Random BMPEP</i>	All eligible projects in baseline watersheds included in random sample pool	All eligible Cat. B projects in baseline watersheds included in random sample pool	All eligible projects included in random sample pool
	<i>Retrospective BMPEP</i>	All eligible projects in baseline watersheds included in non-random sample pool	All eligible Cat. B projects included in random sample pool	All eligible projects included in random sample pool
	<i>Road patrols</i>	Baseline watersheds	Baseline watersheds	All roads
	<i>G-Y-R OHV trail monitoring</i>	Baseline watersheds	Baseline watersheds	None
<i>Baseline (watershed)</i>				
	<i>In-channel</i>	2 subwatersheds in each 5 th field watershed, 5-year intervals	2 subwatersheds in each 5 th field watershed, 5-year intervals	Unspecified number of 6 th field subwatersheds stratified based on watershed condition class, 5-year intervals; includes nested non-random BMPEP
	<i>Range FIB</i>	Selected allotments	One allotment per forest	Selected allotments
	<i>Range allotment checks</i>	All allotments in FIB study; BMP 8-2 requires annual checks in all allotments	Annual to 5 year intervals for allotment checks and vegetative monitoring	
<i>Project-level</i>				
	<i>Non-random</i>	All high-risk	All high-risk	All high-risk

	BMPEP	activities	activities	activities
	<i>In-channel</i>	All projects outside of baseline watersheds if TOC for CWE is reached or exceeded; SCI downstream of project before and after implementation	All projects outside of baseline watersheds; SCI downstream of project annually	All projects outside of baseline watersheds if TOC for CWE is reached or exceeded; SCI downstream of project before and after implementation
<i>Klamath NF</i>		Same as above	Separate monitoring plan under TMDL MOU	Defers to existing MOU

SUGGESTED COMMON APPROACH

Alternative	Component	Common approach
<i>Common to all projects and all watersheds</i>		
	<i>BMP checklists</i>	All Category B projects
	<i>Random BMPEP</i>	All eligible projects included in random sample pool
	<i>Retrospective BMPEP</i>	All eligible projects included in random sample pool
	<i>Road patrols</i>	All roads per WQMH
	<i>G-Y-R OHV trail monitoring</i>	All trails per WQMH: annually for high-risk trails, every 3 years for other trails
<i>Baseline (watershed)</i>		
	<i>In-channel</i>	2 subwatersheds in each 5 th field watershed, 5-year intervals
	<i>Range FIB</i>	Selected allotments to allow comparison with vegetative indicators per description in WQMH
	<i>Range allotment checks</i>	All allotments per WQMH BMP 8-2
<i>Project-level</i>		
	<i>Non-random BMPEP</i>	All high-risk activities
	<i>In-channel</i>	All projects outside of baseline watersheds if TOC for CWE is reached or exceeded; SCI downstream of project before and after implementation
<i>Klamath NF</i>		Per TMDL MOUs