



California Regional Water Quality Control Board

Santa Ana Region



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STATE WATER RESOURCES CONTROL BOARD



K. V. Berchtold

FROM: Kurt V. Berchtold
 Executive Officer
SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD

DATE: November 18, 2011

SUBJECT: COMMENTS RE: USFS WAIVER

By letter dated August 24, 2011, the Santa Ana Regional Water Quality Control Board (Regional Water Board) submitted comments on the initial draft of the proposed US Forest Service Waiver (Waiver). Regional Water Board staff note that it appears that no responses to our prior comments have been prepared; at least, we are unable to locate any such responses on the State Water Board's website and/or program page. Therefore, we are not sure of State Water Board staff's responses to our comments. Nonetheless, we have reviewed the revised proposed Waiver and have the following comments on the revised draft.

One of our major concerns with the revised Waiver continues to be with how the proposed Waiver addresses TMDL implementation. The revised Waiver language, specifically finding #32, and the Initial Study language (pg. 7 of the Initial Study), falls completely short in addressing the implementation of TMDLs by the US Forest Service (USFS). We believe that direct language requiring implementation by the USFS of all appropriate requirements as incorporated in approved TMDLs should be included in the Waiver. It should not be left to the Regional Water Board to advise the USFS that compliance with waiver conditions will not suffice for TMDL purposes. We believe that requiring Regional Water Board notification would result in substantial use of resources to compel the USFS to take appropriate TMDL actions. Significant expenditures already have been made in the process of developing and adopting TMDLs, and assigning proper implementation responsibilities. Our energies should not be expended on "re-imposing" those responsibilities.

Our local USFS district has already determined that they will not participate in TMDL monitoring or provide in-kind services for two of our adopted TMDLs, the Lake Elsinore/Canyon Lake Nutrient TMDLs and the Big Bear Lake Nutrient TMDL. We believe this decision was based in part on the proposed Waiver language. This recent inaction by the USFS is significant in that since the adoption of these TMDLs, the USFS was signatory to the respective TMDL Task Forces and participated in a cooperative manner with the other named discharges in implementation of TMDL requirements. Now, however, they are no longer participating and

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therefore they are no longer in compliance with TMDL requirements. Because the local forest is one of the largest landowners in the areas addressed by one of our TMDLs, USFS' withdrawal from the local TMDL Task Force and completely ignoring our repeated requests and orders to conduct monitoring or submit required information issued pursuant to Water Code sections 13267 and 13383, has unfairly placed the burden of TMDL compliance on only the permitted stakeholders. Obviously, it will require additional resources to compel compliance by the USFS. Without a fair distribution of burden amongst all dischargers including the USFS, our TMDLs involving the USFS will not be fully implemented and compliance with water quality objectives is not likely to be achieved pursuant to the TMDL time schedules. In short, the proposed Waiver has already compromised our TMDL implementation efforts and will do so in the future.

While we appreciate the complexity of what the State Board is trying to achieve in the Waiver, we are not in agreement with providing blanket TMDL compliance coverage for the USFS and allowing legacy sites to be prioritized on a statewide basis. As described above, we are already discovering that this draft language has undermined our ability to implement TMDLs in our region in which the USFS is a key player.

According to Finding #32, the Regional Board would need to notify the USFS in writing if we determine that compliance with the conditions of the Waiver would not satisfy USFS' obligations toward compliance with the implementation requirements for TMDLs in which it is named. If the Waiver continues to advance this approach (and, again, we believe it should not), then the Waiver should be specific about the process for individual regions to tell the USFS under what conditions the Waiver does not ensure TMDL compliance. For example, is there an appeal process and what agency makes the final determination? Further, we want to ensure that the State Water Board has considered the full ramifications of placing this burden on the regional water boards with no additional nonpoint source resources or funding to support the regions.

Finally, we had expected that addressing USFS discharges statewide would enable a consistent streamlined approach to TMDL development and TMDL implementation; however, Regional Water Board staff do not believe that the proposed Waiver will streamline TMDL development for the reasons discussed above. In fact, as described above, the Waiver will likely hamper TMDL implementation and restoration of beneficial uses. Other responsible parties may, quite understandably, object to the special consideration provided to the USFS, which and may contribute to TMDL implementation difficulties even where these other parties have expressed their commitment to water quality improvement and TMDL compliance. This would place an additional burden on Regional Water Board staff.

Should you have any questions about these comments, please feel free to contact me at (951)782-3286. You can also contact Hope Smythe at (951)782-4493, hsmythe@waterboards.ca.gov or Heather Boyd at (951)320-2006, hboyd@waterboards.ca.gov.

cc: Regional Board

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