

COUNTY OF EL DORADO

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SUZANNE ALLEN DE SANCHEZ
Clerk of the Board



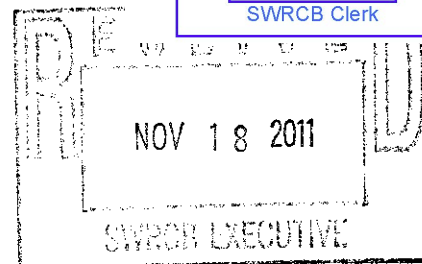
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November 15, 2011

Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th floor
Sacramento, CA 95814

Re: Comment re: USFS Waiver



Dear Ms. Townsend:

El Dorado County ("County") appreciates the opportunity to comment on the Draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest System Lands in California ("Draft Waiver"), which we understand will be considered by the State Water Board at its meeting on December 6, 2011.

The County's concerns relate to several instances in which the County is responsible along with the U.S. Forest Service ("USFS") for certain discharges. In one instance, the Lahontan Regional Water Quality Control Board ("Lahontan") is currently in the process of issuing a National Pollution Discharge Elimination System ("NPDES") Municipal Permit (Draft Permit CAG616001) to the County which includes the recently adopted Lahontan Basin Plan Total Maximum Daily Load requirements for the Lake Tahoe Basin. This new Draft NPDES Permit pertains to stormwater runoff from the urban developed areas of the Lake Tahoe Basin in part under the jurisdiction of the County exclusive of the runoff from non-urban forested area in part under the jurisdiction of the USFS. The Lahontan Water Board and the County continue to debate the proportionate contribution to the sediment load from each land source, and the County is urging the Lahontan Water Board to recognize the significant contribution from USFS lands and to insure that all state and federal agencies are held responsible for adherence to comparable standards. The County is concerned that your proposed Waiver as written could be read to exempt the USFS from full participation in the TMDL pollutant reduction goals set forth within the recently adopted Lahontan Basin Plan amendment in the Lake Tahoe Basin.

The County's experience at Lake Tahoe supports our concern. The Lahontan Water Board currently extends a similar waiver to the USFS, Lake Tahoe Basin Management Unit in

the Lake Tahoe Basin. While it is easy to say as a matter of theory that the USFS's "existing mandates, programs, funding, and resources for protecting and restoring water quality" should provide "better and more efficient protection of the beneficial uses of water" (Draft Waiver paragraphs 2 and 3), the County's experience at Lake Tahoe is that, for a variety of practical reasons, the differing programs and standards applicable to the USFS and the local agencies actually result in the burden of reducing sedimentation to the Lake inevitably falling disproportionately on the local agencies. Your Draft Waiver expresses in paragraph 5 that one of its goals is to make the protection of water quality "as efficient and effective as is feasible," but the most efficient and effective (and fair) regulatory scheme would be to treat the jointly responsible parties in the same way, and not waive the requirements or standards for one of the contributing parties. Paragraph 5 also says that the USFS and the Water Boards have limited resources. Your Draft Waiver should similarly recognize that local agencies, including the County, which are subject to full Water Board regulations, have even more limited resources. The County's experience at Lake Tahoe has shown that having 2 separate compliance regimes for jointly responsible parties inevitably means that the regulatory burden will fall disproportionately on the smallest entities, with the fewest resources. It doesn't make sense to waive the normally applicable water quality requirements for the USFS because of its limited resources, when the effect will be to overburden smaller entities with similar problems.

We have been advised by your staff that the Draft Waiver is not intended to exempt the USFS from the requirements or standards applied by the Lahontan Water Board in the Lake Tahoe Basin, citing paragraphs number 32 and 40, and Statewide General Conditions paragraph number 13, which currently read as follows:

Legal and Regulatory Structure . . .

32. For activities receiving coverage under this Waiver, compliance with the conditions of this Waiver satisfy USFS's obligations toward compliance with the implementation requirements for TMDLs in which it is named, unless the applicable Regional Water Board notifies the USFS otherwise in writing. USEPA has determined that the NWFP standards and guidelines are potentially sufficient to attain riparian vegetation characteristics (e.g., shade, vegetation diversity) that are consistent with temperature load allocations on NFS lands. USEPA has also cited USFS ongoing efforts for the protection and restoration of refugia watersheds for possible TMDL compliance in certain watersheds.

. . .

The Statewide Waiver . . .

40. It is the intent of State Board that this Waiver does not supersede the following:

- a. The authority of an affected Regional Water Board to require a ROWD or issue WDRs for activities not eligible for coverage by this Waiver, including specific projects identified in items 37 and 38 above.
- b. Any more rigorous water-quality-related requirements that are:
 - 1) Established in agreements between any affected Native American tribe and the USFS.

2) Established by a Water Board as necessary to lead to de-listing of water body segments listed as impaired pursuant to Clean Water Act section 303(d).

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Statewide General Conditions . . .

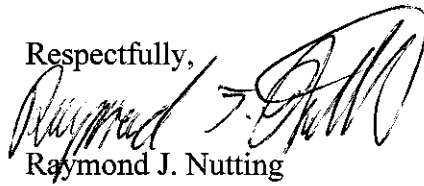
13. Activities conducted under this Waiver must comply with all applicable water quality requirements. Water quality requirements include water quality standards, as well as all other requirements, including guidelines, TMDLs, and prohibitions, set forth in water quality control plans and policies adopted or approved by the State Water Board.

We agree that these paragraphs could be read in a way that the Waiver would not prevent the Lahontan Water Board from considering the sediment contribution from USFS land to the sediments entering Lake Tahoe, and would not exempt the USFS from its responsibility to participate in the efforts to reduce that contribution in the same manner as the local agencies. To avoid any possible future misunderstandings, the County requests that the Waiver state this explicitly, or at least that your official record of the adoption of the Waiver make this clear.

In a second instance, the County and the USFS are responsible parties to a Cleanup and Abatement Order ("CAO") issued in 2009 by the Central Valley Regional Water Quality Control Board, Order No. R5-2009-0030, concerning the Rubicon Trail. The County is concerned because many of the tasks in that order can only be performed by the USFS, and that the proposed Waiver might be read to exempt it from those obligations. Your staff has informed us that the proposed Waiver will not exempt any party from a pre-existing enforcement order. The County requests that the Waiver itself, or your record, verify that the Waiver will not exempt the USFS from any pre-existing or future enforcement orders such as the Rubicon Trail CAO described above.

Thank you in advance for your consideration of these comments. El Dorado County would be happy to provide any additional information if you wish.

Respectfully,



Raymond J. Nutting
Chairman, Board of Supervisors
County of El Dorado

cc: Harold J. Singer, Executive Officer, Lahontan Water Board
Mary Hartzall, Central Valley Water Board