



DEPARTMENT OF FORESTRY AND FIRE PROTECTION

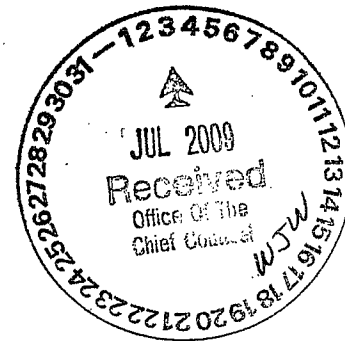
P.O. Box 944246
SACRAMENTO, CA 94244-2460
(916) 653-7772
Website: www.fire.ca.gov



R1

July 2, 2009

Ms. Jeannette L. Bashaw, Legal Analyst
California State Water Resources Control Board
Office of the Chief Counsel
P.O. Box 100
Sacramento, California 95812-0100



Dear Ms. Bashaw,

Pursuant to California Water Code, California Department of Forestry and Fire Protection (CAL FIRE) is appealing action taken by the North Coast Regional Water Quality Control Board (Board). The action being appealed is the adoption of Order No. R1-2009-0038 "Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region" (Waiver). CAL FIRE's concerns with the adopted order relate solely to provisions titled "Categorical Waiver E: Nonindustrial Timber Management Plan (NTMP)". In adopting this order, it is CAL FIRE's contention that the Board failed to adequately consider and respond to the issues raised in CAL FIRE's letter dated May 8, 2009, and that modifications to the draft order made at the Board hearing failed to adequately inform stakeholders of substantial changes made to the Waiver that was adopted from the Waiver that was originally noticed.

At the hearing, CAL FIRE reiterated these points and provided information on numbers of NTMPs and acreage of NTMPs that would be impacted by adoption of the Waiver without changes to Categorical Waiver E. After the close of the public hearing, Board members made a number of motions for additions to, or modifications of, draft language prior to adopting the Waiver. It is CAL FIRE's view that adoption of these changes without recirculation of the final amended language violated due process to those landowners affected by the Waiver, as well as to CAL FIRE.

CAL FIRE is requesting that the State Water Resources Control Board act affirmatively on this appeal to accomplish the following:

- (1) Rescind the Waiver adopted on June 4, 2009 for Categorical Waiver E and extend the previous waiver for an additional five years, unless it is demonstrated that these approved NTMPs have resulted or could potentially result in Basin Plan violations.

Ms. Jeannette Bashaw, Legal Analyst
July 2, 2009
Page Two

(2) Initiate a process to create a Statewide waiver for NTMPs that would bring consistency to the permitting process.

(3) In the event that the State Water Resources Control Board remands the Waiver to the Board (an option CAL FIRE does not support); require the Board to conduct a full California Environmental Quality Act analysis in an Environmental Impact Report process based on best available science, current Forest Practice Rule application and field monitoring data; and continue the provisions of the previous waiver to ensure ongoing coverage for NTMPs during the interim period.

All issues raised in this petition with the exception of the concern regarding the substantial changes made to the Waiver were raised with the Board in writing and through testimony provided at the hearing by CAL FIRE Deputy Director William E. Snyder. A copy of the adopted Order is attached per Section 13320 of the California Water Code and its regulations, 23 CCR § 2050(a) through (c).

Sincerely,



DEL WALTERS
Director

Attachments

cc: North Coast Regional Water Board

bcc: Del Walters, Director
Crawford Tuttle, Chief Deputy Director
William Snyder, Deputy Director, Resource Management
Duane Shintaku, Assistant Deputy Director, Forest Practice
Dennis Hall, Staff Chief
Giny Chandler, Chief Counsel
Pete Cafferata, Forester II
Clay Brandow, Environmental Specialist IV

1 July 2, 2009
2 The California Department of Forestry and Fire
3 Protection
4 Ginevra K. Chandler, Chief Counsel, (SBN 151231)
5 P.O. Box 944246
6 Sacramento, CA 942244-2460
7 Telephone: (916) 653-4153
8 Facsimile: (916) 657-4072



9
10 BEFORE THE
11 CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

12 **In the matter of the California Department of**
13 **Forestry and Fire Protection Appeal of Action**
14 **taken by the North Coast Regional Water**
15 **Quality control Board with Adoption of**
16 **ORDER NO. R1-2009-0038 titled “Categorical**
17 **Waiver of Discharge Requirements for**
Discharges Related to Timber Harvest Activities
on Non-Federal Lands in the North Coast
Region”.

SWRCB/OCC File _____

PETITION FOR REVIEW; REQUEST
FOR CONSIDERATION OF
SUPPLEMENTAL EVIDENCE
[Wat. Code, § 13320]

18
19 **(1) Petitioner:**

20 **California Department of Forestry and Fire Protection**
21 **P.O. Box 944246**
22 **Sacramento, CA 94244-2460**
(916) 653-7772
E-mail: Crawford.Tuttle@fire.ca.gov

23 **(2) Specific Action for which a State Board Review is being Requested:** Adoption of
24 ORDER NO. R1-2009-0038 by the North Coast Regional Water Quality Control Board (Board)
25 titled “Categorical Waiver of Discharge Requirements for Discharges Related to Timber Harvest
26 Activities on Non-Federal Lands in the North Coast Region” (Waiver).

27 **(3) Date on Which the Regional Board Acted:** June 4, 2009
28

1 **(4) Reason for Appeal**

2 The State Water Resources Control Board (State Board) has received more appeals of North
3 Coast Regional Water Quality Control Board decisions relating to timber operations than any
4 other kind of appeal from a regional board action. These appeals most commonly are by
5 landowners or environmental groups, not State agencies. The Department of Forestry and Fire
6 Protection (CAL FIRE) has refrained from employing the appeal process before the State Board,
7 preferring to work cooperatively with Board staff to seek a resolution of professional differences
8 in regulations and orders. However, in this case, on a very narrow issue involving a subset of
9 commercial timber operations known as Nonindustrial Timber Management Plans (NTMPs),
10 CAL FIRE is compelled to seek such relief due to the potential for regulatory inconsistency, not
11 just within the various regional board waiver processes, but between the Forest Practice Act and
12 Rules which govern timber operations in California and the Waiver adopted by the Board. The
13 adoption of this Waiver will impose a significant economic burden on CAL FIRE and on
14 landowners and will have little benefit to water quality.

15 NTMPs are a very small subset of commercial timber operations in California and the
16 Legislature has created a process by which those landowners give up the ability to harvest more
17 intensively in return for a long-term management plan that streamlines approval on individual
18 harvest plans.

19 Pubic Resources Code (PRC) § 4593.3 provides:

20 (a) The Legislature finds and declares that a substantial acreage of timberlands of
21 the state are held by private nonindustrial owners and that it is the policy of the
22 State to increase the productivity of these timberlands under prudent management
23 plans to serve the public's need for timber and other forest products.

24 (b) The Legislature further finds and declares that minimal harm is caused by
25 prudent management of nonindustrial timberlands because low volume production
26 and dispersion around the State of these small tracts reduces damage to aesthetics,
27 air quality, watersheds, and wildlife.

28

1 (c) The Legislature further finds and declares that it is the policy of the State to
2 encourage prudent and responsible forest resource management of nonindustrial
3 timberlands by approving nonindustrial timber management plans in advance and
4 withdrawing governmental discretion to disapprove nonindustrial timber harvest
5 notices submitted pursuant to the approved nonindustrial timber management
6 plans.

7 Thus, the Legislature clearly intended that these small nonindustrial lands be free from
8 subsequent regulatory changes after approval of a NTMP unless a significant and potentially
9 adverse impact not previously analyzed requires additional mitigation. Here, Board staff have
10 failed to provide any, let alone substantial evidence that, as approved through an interagency
11 process of which Board staff were a participant, existing NTMPs will create negative impacts to
12 water quality as presently approved.

13 Despite this lack of evidence, the Board's action will impose significant economic
14 impacts on CAL FIRE in order to conduct additional environmental review of changes to
15 NTMPs intended to address specific conditions of the Waiver, and to enforce the changes. In
16 addition, many of the Waiver's provisions are inconsistent with the Forest Practice Act and
17 Rules and create a duplicative and unnecessary layer of regulation. Furthermore, the Waiver will
18 create additional environmental review by the Board in order to impose the specific conditions of
19 the Waiver. This creates a piecemealing process which is disfavored by the California
20 Environmental Quality Act (CEQA).

21 The enrollment criteria of the Waiver will impose such significant burdens on landowners
22 that a likely result of the Waiver will be the cancellation of a subset of approved NTMPs, and the
23 conversion of those timberlands to non-timber related uses. This change in land use will have
24 negative impacts on habitat, water quality and climate change. This potentially significant
25 impact was nowhere analyzed by the Board.

26 **(5) Reason the Action was Inappropriate or Improper**

27 Pursuant to California Water Code, Section 13320(a), CAL FIRE is appealing action
28

1 taken by the North Coast Regional Water Quality Control Board. The action being appealed is
2 the adoption of ORDER NO. R1-2009-0038 (Order) "Categorical Waiver of Waste Discharge
3 Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the
4 North Coast Region". CAL FIRE's objections to the adopted Order relate solely to provisions
5 titled "Categorical Waiver E: Nonindustrial Timber Management Plan (NTMP)". In adopting
6 this Order, it is CAL FIRE's contention that the Board failed to adequately consider and respond
7 to the issues raised in CAL FIRE's letter dated May 8, 2009, and that modifications to the draft
8 Order made at the Board hearing were substantial, changed the notice Waiver dramatically, and
9 were not a logical outgrowth of the previously noticed process. CAL FIRE believes adoption of
10 the changes made to the regulation by the Board during the hearing should have been postponed
11 until the public had an opportunity to evaluate the impacts of the change and provide related
12 comments for the Board's consideration prior to adoption of the changes.

13 In addition, the Waiver lacks adequate environmental analysis under CEQA. The Board
14 also failed to make findings to support their decision as required by California law.

15 CAL FIRE specifically reserves the right to file a more detailed statement containing
16 points and authorities in support of this petition as well as the right to submit additional argument
17 and evidence in reply to any responses filed to this petition in accordance with California Code
18 of Regulations, Title 23, Section 2050.5(a).

19 CAL FIRE's May 8, 2009 letter to the Board raised seven specific concerns regarding the
20 Draft Waiver and associated Staff Report and Initial Study. The concerns raised in the May 8,
21 2009 letter are as follows:

- 22 1. The proposed Waiver is inconsistent with current Forest Practice Rules and Forest
23 Practice Act direction.
- 24 2. The proposed Waiver is inconsistent with Public Resources Code (PRC) § 4592(c) of the
25 Z'Berg-Nejedly Forest Practice Act.
- 26 3. The proposed Waiver places a significant Review Team workload on CAL FIRE.
- 27 4. The proposed Waiver places an enforcement workload on CAL FIRE.
- 28

1 5. There is a lack of scientific basis to establish necessity for establishing separate
2 watercourse protection standards from those already in the Forest Practice Act and Forest
3 Practice Rules.

4 6. The Waiver inspection plan and reporting requirements duplicate the requirements of the
5 Forest Practice Act.

6 7. Findings in the CEQA Initial Study supporting the preparation of a Mitigated Negative
7 Declaration for the Waiver are inaccurate.

8 At the hearing CAL FIRE reiterated these points and provided information on numbers of
9 NTMPs and acreage of NTMPs that would be impacted by adoption of the Waiver without
10 changes to Categorical Waiver E.

11 After the close of the public hearing, Board members made a number of motions for
12 additions to or modifications of draft language prior to adopting the Waiver. It is CAL FIRE's
13 view that the changes made by the Board during the hearing were substantial, changed the
14 noticed Waiver dramatically, and were not a logical outgrowth of the previously noticed process.
15 CAL FIRE believes adoption of the changes made to the regulation by the Board during the
16 hearing should have been postponed until the public had an opportunity to evaluate the impacts
17 of the change and provide related comments for the Board's consideration prior to adoption of
18 the changes.

19 CAL FIRE also contends that the Board's action failed to adopt findings based upon
20 substantial evidence to support its decision to adopt the Waiver.

21 In addition, CAL FIRE contends that the mitigated negative declaration adopted by the Board
22 is inadequate as the Waiver requires a full Environmental Impact Report (EIR) under CEQA
23 because CAL FIRE has raised a fair argument that the Waiver conditions may have a significant
24 adverse impact on the environment.

25 **(6) The Manner in Which the Petitioner is Aggrieved.**

26 Following are the specific concerns which serve as the basis for CAL FIRE's appeal and
27 request for stay of the Board action:

1 **1. The Proposed Waiver is Inconsistent with Current Forest Practice Rules and**
2 **Forest Practice Act Direction.**

3 The legislative intent as reflected in the Z'Berg-Nejedly Forest Practice Act is found in
4 PRC § 4593(b) which states:

5 “The Legislature further finds and declares that minimal environmental harm is
6 caused by prudent management of nonindustrial timberlands because low volume
7 production and dispersion around the State of these small tracts reduces damages
8 to aesthetics, air quality, watersheds, and wildlife.”

9 Legislative intent is further expressed in PRC § 4593(c) which states: “The Legislature
10 further finds and declares that it is the policy of the State to encourage prudent and responsible
11 forest management of nonindustrial timberlands by approving nonindustrial timber management
12 plans in advance and withdrawing governmental discretion to disapprove nonindustrial timber
13 notices submitted pursuant to the approved nonindustrial timber management plans.”

14 Thus, a timberland owner (or nonindustrial tree farmer) gives up significant rights to
15 harvest timber more intensely under a standard timber harvesting plan by participating in a
16 nonindustrial timber management plan, which received extensive review by all trustee and
17 responsible agencies, including Board staff.

18 It is also clear, based on provisions of PRC § 4594, that as long as there had not been a
19 significant change in condition that would prevent a Registered Professional Forester (RPF) from
20 certifying that timber operations could proceed under the approved NTMP without
21 environmental impacts, the Legislature intended the noticing process to be ministerial. Without
22 the identification of a new potentially significant impact which had not been previously disclosed
23 and mitigated, or a change in conditions which could lead to significant adverse impacts,
24 additional mitigations would not be required to operate under a Notice of Timber Operations
25 (NTO) for an approved NTMP. At the time of approval, the NTMP was determined to be in
26 conformance with the Forest Practice Rules, which have also required disclosure and protection
27 of beneficial uses of water as part of the review process. When Board staff participated in the
28 NTMP review process and recommended mitigation measures, they concurred that the measures

1 proposed in the NTMP to protect water quality were adequate and complied with the Basin Plan.
2 CAL FIRE could not require amendment of an approved NTMP to comply with the Waiver
3 conditions without a clear need, such as a new potentially significant environmental impact
4 which was not analyzed at the time the NTMP was approved. Board staff has not presented
5 evidence to the Board or to CAL FIRE to demonstrate that operations conducted in conformance
6 with approved NTMPs pose a threat to water quality. In the absence of such findings specific to
7 an approved NTMP, it was the Legislature's intent that operations could occur without further
8 discretionary review by CAL FIRE.

9 CAL FIRE also has general concerns related to Waiver conditions (Categorical Waiver E
10 and F) that attempt to govern the conduct of timber operations. CAL FIRE acknowledges and
11 understands that the Board has authority to establish standards to prevent degradation of water
12 quality. The question here is whether the Waiver process is an efficient and necessary exertion
13 of that jurisdictional authority. The PRC §§ 4551 and 4551.5 clearly mandate the Board of
14 Forestry and Fire Protection adopt forest practice rules and regulations which govern the
15 **conduct** of timber operations which include measures to protect water quality.

16
17 *Public Resources Code Section 4551.5. Application Development. Rules and*
18 *regulations shall apply to the conduct of timber operations and shall include, but shall*
19 *not be limited to, measures for fire prevention and control, for soil erosion control, for*
20 *site preparation that involves disturbance of soil or burning of vegetation following*
21 *timber harvesting activities conducted after January 1, 1988, for water quality and*
22 *watershed control, for flood control, for stocking, for protection against timber*
23 *operations which unnecessarily destroy young timber growth or timber productivity of*
24 *the soil, for prevention and control of damage by forest insects, pests, and disease, for the*
25 *protection of natural and scenic qualities in special treatments areas identified pursuant*
26 *to subdivision (b) of Section 30417, and for the preparation of timber harvesting plans.*
27 *In developing these rules, the board shall solicit and consider recommendations from*
28 *the department, recommendations from the Department of Fish and Game relating to*

1 *the protection of fish and wildlife, recommendations from the State Water Resources*
2 *Control Board and the California regional water quality control boards relating to*
3 *water quality, recommendations from the State Air Resources Board and local air*
4 *pollution control districts relating to air pollution control, and recommendations of the*
5 *California Coastal Commission relating to the protection of natural and scenic coastal*
6 *zone resources in special treatment areas.*

7 It is clear that the Legislature intended CAL FIRE work with the Board to formulate
8 appropriate rules that would govern the conduct of timber operations. The Legislature did not
9 intend that the Board would create another parallel system of conditions or criteria aimed at
10 governing the conduct of timber operations. In fact, the Water Code, Section 13360(a) prohibits
11 the Board from specifying "the design, location, type of construction, or particular manner in
12 which compliance may be had with that requirement, order or decree, and the person so ordered
13 shall be permitted to comply with the Order in any lawful manner." The Board's action clearly
14 violates this provision of its own statutes by requiring specific requirements such as tree canopy
15 retention requirements, and specific action required to be included in road management plans.
16 This is all the more egregious as these specific requirements often directly conflict with the
17 Forest Practice Act and Rules regulating tree canopy and stream crossings.

18 CAL FIRE asserts that the Waiver "Specific Conditions" for Category E are not
19 consistent either with existing current or proposed updates to Forest Practice Rules.
20 Furthermore, in spite of CAL FIRE's continued contact with the Board staff to be engaged in
21 rulemaking processes, Board staff participation has been sporadic and not focused on providing
22 meaningful participation nor can Board staff participation be characterized as demonstrating a
23 willingness to contribute to a consensus driven approach to problem solving.

24 CAL FIRE urged the Board to consider specific regulatory actions before the Board of
25 Forestry and Fire Protection to address watercourse and lake protection measures. CAL FIRE
26 also urged the Board not to create a different set of operational rules which create an unnecessary
27 and duplicative regulatory framework for protection of beneficial uses. Board staff argued and
28 the Board accepted the premise that the measures being adopted were voluntary. It was staff's

1 assertion that because of the voluntary nature of the Waiver it was appropriate for the Board to
2 adopt operational rules which sometimes duplicate and at other times conflict with adopted
3 Board of Forestry and Fire Protection rules. CAL FIRE questions the voluntary nature of the
4 Waiver given that landowners will either be required to enroll under the operational requirements
5 of the Waiver or seek a Waste Discharge Permit prior to operations. This is an either or decision
6 – one path must be chosen. Thus, there is nothing voluntary about either of these choices.
7 Enrollment in the Waiver is a permit with mandatory conditions that must be met by the enrollee.
8 If the NTMP landowner seeks enrollment under the adopted Waiver, a separate set of operational
9 rules will apply. It is CAL FIRE's contention that this will increase costs to NTMP landowners
10 without a demonstrated necessity or link to non-attainment of Basin Plan standards. Enrollment
11 requirements will require amendment of these approved NTMPs.

12
13 **2. The proposed Waiver is inconsistent with PRC § 4592(c) of the Z'Berg-Nejedly Forest Practice Act.**

14 The revisions to the Categorical Waiver E, which is the Waiver category applicable to
15 NTMPs, require landowners to meet specific conditions. The "Specific Conditions" items listed
16 in the Waiver would trigger changes to the NTMP which are both operational and content
17 related. As stated previously, these modifications would likely trigger a discretionary process
18 that would need to be undertaken prior to operations under a notice of timber operations.

19 Under the provisions of PRC § 4593(c), CAL FIRE does not have the authority to require
20 such a discretionary process. It is CAL FIRE's position that the Board also lacks authority to
21 take administrative action to circumvent statutory intent. As such, CAL FIRE cannot utilize the
22 functional equivalency process to facilitate amendment of approved NTMPs. Such action on our
23 part would trigger a discretionary review by CAL FIRE, which is not consistent with Legislative
24 findings and declarations. Evaluation of the items required as specific conditions under the
25 proposed Waiver require CEQA analysis under the Board's statutory authorities.

26 Board staff responses to this concern by CAL FIRE were both conclusory and
27 unsupported by fact. Board counsel asserts that the Board Executive Officer can rely on the
28 Initial Study and Mitigated Negative Declaration to conduct discretionary reviews of these

1 approved NTMPs without utilizing a separate CEQA process. It is CAL FIRE's opinion that the
2 issuance of a permit based on a discretionary review is a governmental action pursuant to CEQA
3 Section 15002(d) and (i) that would trigger compliance with CEQA. The existing mitigated
4 negative declaration does not contain sufficient specificity to provide adequate CEQA analysis of
5 the potential impacts of the Waiver, specifically on potential changes in land use.

6 Further, it is CAL FIRE's approval that complies with the provisions of CEQA through its
7 functional equivalency process which covers NTMPs. Also, at the time the NTMP is approved,
8 the plan is determined to be in conformance with the Forest Practice Act, the Porter-Cologne
9 Water Quality Act and the applicable Basin Plan. Board staff have participated and commented
10 on that process. CAL FIRE asserts that it maintains Lead Agency status. Pursuant to 14 CCR §
11 15162, subsequent CEQA actions in the form of subsequent EIRs or Negative Declarations,
12 should not take place unless there are substantial changes such as a new potentially significant
13 environmental impact not previously analyzed or a proposed mitigation measure for such a new
14 significant impact which the permit holder declines to adopt. Contrary to this general CEQA
15 direction the Board added language to the Specific Conditions portion of Categorical Waiver E at
16 Part 4a that is discretionary in nature and addresses issues already addressed in the approved
17 NTMP without a demonstration of necessity pursuant to the criteria of CEQA (ref. 14 CCR §
18 15162). No showing of violations of the Basin Plan, new potentially significant environmental
19 impacts or proposed mitigations measures to address a new significant impact were made by
20 Board staff or by any other participant in the Waiver adoption process. The Initial Study and
21 staff report fails to establish that basis in light of any of the required criteria. Yet, Part 4a gives
22 the Executive Officer of the Board authority to consider alternative canopy retention levels
23 through a clearly discretionary process wherein the landowner must apply in writing and the
24 Executive Office must find that the alternative meets the standards of the "Specific Conditions".
25 This is clearly a discretionary process that would trigger CEQA.

26 **3. The proposed Waiver places a significant review workload on CAL FIRE.**

27 As Lead Agency responsible for the original approval, CAL FIRE would be tasked with
28 processing amendments associated with incorporating the "Specific Conditions" criteria into an

1 approved NTMP that are operational in nature. CAL FIRE asserts that amendment of an
2 approved NTMP to incorporate the additional information including an Erosion Control Plan and
3 a Road Management Plan and other operational "specific conditions", would trigger a major
4 amendment to the approved NTMP.

5 PRC § 4593.8 sets forth the conditions for amending an approved NTMP. Under the
6 provisions of PRC § 4593.8, the nonindustrial tree farmer may not take any action which
7 substantially deviates from the approved plan. Further, the statute delegates the authority to the
8 Board of Forestry and Fire Protection for defining such deviations. The Board of Forestry and
9 Fire Protection has developed definitions of what constitutes a substantial deviation in 14 CCR §
10 895.1 and has established regulations for amending approved NTMPs. In this context
11 amendments to an NTMP must comply with the provisions of 14 CCR §§ 1090.24 and 1090.25.
12 It is CAL FIRE's position that, prior to taking any of the actions that are required as part of the
13 Waiver process, individual NTMPs would need to be amended.

14 CAL FIRE provided information to the Board that there are an estimated 525 approved
15 NTMPs on file in CAL FIRE's Santa Rosa office. All of these NTMPs would be required to
16 enroll under the Waiver by June 4, 2010. Inclusion of the operational measures, Erosion Control
17 Plans and Road Management Plans would likely trigger a major amendment to each of these
18 NTMPs. Handling and processing of these amendments at our Region and field offices would
19 add significantly to staff workload. Currently, CAL FIRE has approximately 500 approved
20 NTMPs which are managed from our Santa Rosa Office. Assuming that these amendments are
21 uniformly spread across a five year period, CAL FIRE would process approximately 100
22 amendments per year. Assuming 16 total hours of review time to process the amendment
23 through first, second and approval along with 4 hours of clerical support, workload associated
24 with processing of these amendments would involve approximately 2000 hours of staff time per
25 year. Processing of the amendments to schedule and conduct field reviews, generation of
26 recommendations and reports and other items would add approximately 20 hours per amendment
27 or another 2000 hours per year. Combined, these 4000 hours represent the equivalent of 2.25
28 personnel years at a cost of approximately \$280,000.

1 It is unlikely that this workload could be accommodated even with the currently
2 depressed plan numbers without redirecting staff from current assignments which would
3 negatively impact THP review and enforcement of the Forest Practice Act and Rules or hiring
4 additional staff, which is not possible under current budgetary conditions. The proposed "one-
5 time" application fee of \$250 for Categorical Waivers E and F may provide relief for the Board,
6 but no such benefit would be realized by CAL FIRE. Any proposal which requires the
7 acceptance of any additional unfunded work is not feasible and is unacceptable to CAL FIRE.

8 Board staff response to this concern states that "...It is not clear whether these conditions
9 would require the landowner to report any changes to CAL FIRE as "non-substantial deviations"
10 from the plan under Public Resources Code Section 4593.9...." Aside from this being the wrong
11 code citation as explained previously, additions of Road Management Plans, Erosion Control
12 Plans and other operational elements would constitute new information that would in most
13 instances trigger an amendment pursuant to CEQA Section 15162 (a)(3). The Board's action and
14 staffs' response to CAL FIRE's concerns of additional costs also violate the Porter-Cologne Act.
15 Water Code Section 13000 specifically requires the Board to regulate "to attain the highest water
16 quality which is reasonable, considering all the demands being made and to be made on those
17 waters and the total values involved, beneficial and detrimental, economic and social, tangible
18 and intangible." Nowhere in staff's response is there any analysis of the economic cost to CAL
19 FIRE to review the amendments required to bring the current NTMPs into conformance with the
20 newly adopted Waiver.

21 **4. The proposed Waiver places an enforcement workload on CAL FIRE.**

22 If these NTMPs are amended to include protection measures to address operational elements
23 associated with a number of the "Specific Conditions" of the Waiver, those protection measures
24 would become enforceable provisions of the NTMP and CAL FIRE would have an additional
25 regulatory enforcement burden. The specific conditions are not based on Forest Practice
26 regulation and may even conflict with standards adopted by the Board of Forestry and Fire
27 Protection. CAL FIRE would, in effect, be tasked with enforcing conditions of the Board's
28 Waiver, adding a significant and complex additional workload on CAL FIRE staff without

1 additional funding or hiring authority.

2 As noted in the staff response to CAL FIRE's concern in this regard, Board staff asserts
3 that it will be CAL FIRE's responsibility to enforce these added conditions. Enforcement could
4 add at least one additional personnel year at a cost to CAL FIRE of \$125,000. This imposes a
5 significant cost burden on CAL FIRE that the Board has failed to recognize, analyze or mitigate,
6 ignoring the policy considerations required by Water Code Section 13000.¹

7 Setting aside the previous arguments that Board staff posits regarding the need to require
8 amendments of these approved plans; Board staff places an expectation on CAL FIRE staff for
9 enforcement which is inappropriate. CAL FIRE's enforcement authority derives from the
10 enforceable elements of the approved plan. Without amendments to incorporate the Board staff
11 enrollment elements, CAL FIRE would, in spite of Board staff's assertions to the contrary, have
12 limited authority to assume an enforcement role for mitigations and monitoring not authorized
13 and approved in an NTMP or the Forest Practice Act and Rules.

14 **5. Lack of Scientific Basis to Establish Separate Watercourse Protection Standards.**

15 The BOARD OF FORESTRY AND FORESTRY AND FIRE PROTECTION, as part of
16 a rulemaking process to improve the scientific basis for regulations designed to protect federally
17 or State listed salmonids, contracted for a literature review and science based assessment of
18 measures to protect riparian areas. These changes have been reflected in a rule package which
19 has just been circulated for public comment. The proposed rules recommend protection
20 measures for Class I, Class II, and Class III watercourses. A copy of the science review report
21 produced by Sound Watershed Consulting can be obtained at:

22 http://www.fire.ca.gov/CDFBOFDB/pdfs/FINALBOOK_1.pdf

23 In particular, SWC (2008) reported that in fish-bearing streams that are directly
24 downstream of Class II headwater streams, water temperature can be positively influenced by
25 providing shaded conditions on headwater stream segments that extend from 500 to 650 ft (150

26 _____
27 ¹ The staff also failed to provide evidence that costs to landowners were considered under the new Waiver. Instead
28 staff concluded that they did not ask for costs because such an estimate would be too generalized. This is a flagrant
violation of Water Code policy which requires a balancing of economic costs with other considerations. Without
providing any information on landowner costs, how could the Board make a balanced decision?

1 to 200 m) upstream from the confluence with fish-bearing streams. SWC (2008) noted that the
2 downstream temperature response from timber harvest in headwater streams is variable and is
3 highly dependent on a host of factors (e.g., volume of streamflow, canopy cover, substrate type,
4 instream wood volume, groundwater inflow, and hyporheic exchange) in both the headwaters
5 and downstream reaches. While they stated that the findings of research outside of California
6 suggest that buffers extending from 500 to 650 feet upstream may be adequate to protect water
7 temperature in low order streams that drain into fish bearing waters, they added that additional
8 research is needed in California to validate or refine this relationship. Other published papers in
9 the scientific literature suggest that the zone for water temperature recovery for headwater
10 streams may extend to 1000 feet, depending on stream size.

11 Clearly, the scientific literature reveals that shade reduction on the lower portion of larger
12 Class II watercourses that flow at least into mid-summer months is what can influence water
13 temperatures in fish-bearing Class I watercourses (i.e., not the entire channel classified as a Class
14 II watercourse). The "Specific Conditions" requirements for canopy retention as part of the
15 Conditional Waiver do not make this distinction for Class II watercourses, while the proposed
16 BOARD OF FORESTRY AND FORESTRY AND FIRE PROTECTION rule package
17 delineates both large and standard Class II watercourses, with differing overstory canopy
18 requirements.

19 Once the Board of Forestry and Fire Protection's revised Threatened or Impaired
20 Watershed rule package is approved, it should be the goal of the State to have a set of consistent
21 rules to guide project implementation. To that end, it would be desirable to have the "Specific
22 Conditions" of the Waiver be consistent with Board of Forestry and Fire Protection regulations.
23 With respect to already approved NTMPs, the NTMPs in watersheds with listed salmonids have
24 for some time incorporated enhanced measures for watercourse protection. Negative impacts to
25 water quality from NTMPs found in conformance with the protection measures incorporated into
26 these NTMPs are not anticipated.

27 The Board staff response to this comment and the analysis provided in the staff report
28 justifying the need for the "specific conditions" reflects a troubling lack of knowledge of the

1 application of the Forest Practice Rules and the science associated with water temperature. For
2 example, the scenario and modeling done to establish concerns over temperature as reflected on
3 page 16 in the Board staff report analyses a scenario that would not be possible under the current
4 Forest Practices Rules. The model assumes that a watershed's riparian zones are converted from
5 baseline (95%) overstory canopy to the minimum Forest Practice Rule standard (50%) in a single
6 hypothetical harvest entry. The Board's modeled scenario has not to CAL FIRE's knowledge
7 ever occurred since enactment of the Forest Practice Act.

8 The model results do not represent a realistic application of the Forest Practice Rules as
9 applied on the ground and does not represent relevant temporal and spatial factors. Entire
10 watershed riparian networks are not converted from very high overstory canopy to minimum rule
11 standards in one harvest entry. Harvests under NTMPs generally utilize cutting cycles of every
12 10 to 15 years or longer for unevenaged management. With evenaged silvicultural systems, re-
13 entry into the WLPZ is considerably less frequent.

14 It is well established in the scientific literature that after a riparian zone is entered and
15 canopies are reduced, possibly to Forest Practice Rule standards (i.e., 50%), canopy levels often
16 increase relatively rapidly again over time, particularly in the Coast Range. For example,
17 Summers (1982) reported that in three of five studied vegetational zones in Western Oregon,
18 75% percent angular canopy density (ACD) can be expected in 8 to 20 years following clearcut
19 harvesting to the stream edge (i.e., no buffer strip). In the high elevation Cascade Range and the
20 mixed conifer zones, the maximum canopy density observed within 29 years of harvesting
21 averaged approximately 65 percent for the first through third order perennial streams evaluated.

22 The analysis also fails to compare the proposed canopy retention which are included in
23 the "specific conditions" with current Forest Practice Rule canopy retention levels nor has it
24 recognized the results of monitoring conducted by CAL FIRE (see other comments).

25 Because Board staff's analysis does not reflect current rule application in general and
26 certainly does not reflect canopy retention levels associated with light touch NTMPs, it is biased
27 and CAL FIRE concludes was specifically skewed to provide purported scientific support for the
28 Board staff proposal. Board staff's approach is clearly self-serving and developed more as a

1 justification to support the rule package than an objective analysis. As such, the analysis should
2 have been questioned by the Board, particularly in light of the testimony received from other
3 parties; it was not. Thus, the Board's action can be characterized as arbitrary and capricious as it
4 lacks substantial evidence to support adoption of the Waiver.

5 Board staff should be directed to compare the temperature outcomes utilizing readily
6 available rule and harvest plan data along with more appropriate canopy retention levels based
7 on post-project monitoring results reported by CAL FIRE through its "Hillslope Monitoring
8 Program" or "Modified Completion Report Monitoring Program". These studies indicate that
9 post-harvest total canopy, which is related to stream shading, was approximately 80% for Class I
10 and II watercourses the Coast Forest Practice District and 70% for the inland forest practice
11 districts. Links to these reports as well as other water quality monitoring reports prepared by
12 CAL FIRE or for the Board of Forestry and Fire Protection were provided the Board at the
13 hearing and have always been available to water quality staff.

14 **6. Waiver Inspection Plan and Reporting Requirements Duplicate the Requirements of the**
15 **Forest Practice Act.**

16 According to the proposed Waiver, each project enrolled in Categorical Waivers E and F
17 must submit an Inspection Plan with certain reporting requirements. The actual language states:
18 "*Dischargers must follow the Inspection Plan detailed below for evaluating the effectiveness of*
19 *the management measures in the Erosion Control Plan...*".

20 The Inspection Plan must include a narrative discussion of the program to inspect, must be
21 prepared by "Qualified Professionals", and report specifically on:

- 22
- 23 • the date of each inspection
 - 24 • the inspector's name
 - 25 • the location of each inspection
 - 26 • the title and name of the person submitting the summary report
 - 27 • a brief narrative description of observed condition
 - 28 • a description of new controllable sediment discharge sources

- 1 • a description of corrective actions
- 2 • a description of prevention and minimization measures included in the erosion control
- 3 plan (ECP)
- 4 • a description of where management measures have been ineffective.

5
6 CAL FIRE has concerns over the proposed Inspection Plan because the responsible party for
7 reporting is the “discharger” and ultimately the landowner. What is being described is a self-
8 reporting, self-auditing program, even though a “Qualified Professional” must conduct all
9 specified inspections on behalf of the landowner. Since the Waiver does not specify a minimal
10 acceptable level of experience, knowledge and training, it is possible that unqualified individuals
11 will produce substandard inspection summaries. Many landowners and/or agents are not
12 qualified to make technical monitoring assessments. It clearly requires expertise, experience,
13 education and training to assess controllable sediment discharge sites such as critical dips,
14 constructed/reconstructed roads, skid trails, road drainage structures, culvert installations,
15 erosion voids, tension cracks, rills, gullies, landings, and high/extreme erosion hazard rating
16 areas. To assume a “self-auditing” inspection program by private landowners or hired agents
17 will result in accurate results and is naïve at best.

18 To address this problem, “Dischargers” may be need to retain the services of a licensed
19 resource professional (forester, geologist, civil engineer, etc.), which results in a duplicative
20 costly process since timberland owners are first required to hire the services of a licensed
21 individual (RPF) to prepare their timber harvesting plan or NTMP (PRC § 4581). The
22 THP/NTMP content requirements and review team process is designed to elicit key information
23 related to possible water quality impacts, beneficial use issues, as well as many other
24 environmental considerations. The similarity of what is required under the proposed Waiver
25 Inspection Report, Erosion Control Plan and Road Management Plan and what is required under
26 a THP, NTMP, PTHP, or modified THP (14 CCR § 1034) is remarkable. Thus, the Waiver
27 process is unnecessary duplication of an existing regulatory requirement in the Forest Practice
28 Act and Rules.

1 CAL FIRE believes the Forest Practice Program will provide more credible inspection
2 reporting information over what is proposed in the Waiver. Although there are similarities
3 between the proposed Waiver inspection reporting requirements, the required elements in a THP,
4 and CAL FIRE's inspection program, there are significant differences as well. CAL FIRE's
5 Forest Practice Inspectors are all licensed RPFs. CAL FIRE's RPFs are well trained,
6 experienced and qualified to assess pre-harvest conditions (prior to plan approval), as well as to
7 develop appropriate mitigation to avoid water quality impacts. Failure to do so has implications
8 for the license of the inspector. Further, CAL FIRE Forest Practice Inspectors are required to
9 clearly document their observations which in turn could be used to satisfy the Board's need for
10 inspection and monitoring documentation. Forensic monitoring is also conducted by CAL FIRE
11 with the requirement for Licensed Timber Operators (LTOs) to implement corrective remedial
12 actions if/when violations of the Forest Practice Rules occur. Consequently, CAL FIRE believes
13 another option to the proposed Inspection Plan in the Waiver is the possibility to utilize the
14 documentation and routine field inspections by CAL FIRE Forest Practice Inspectors. Joint
15 interagency inspections are also another possibility that can be developed further. Better
16 monitoring and inspection coordination between CAL FIRE and the Board would also help meet
17 the growing public demand for a more efficient regulatory process, both in terms of time and
18 costs as well as to increase public confidence in the monitoring results.

19 CAL FIRE presented information and excerpts from monitoring it conducted through its
20 Modified Completion Reporting Program to the Board. CAL FIRE also reinforced its active
21 inspection plan and work completion inspection process as being wholly adequate to meet the
22 needs of the monitoring being required of landowners under the Waiver. In the Board staff
23 response to CAL FIRE's concerns about the quality of landowner self reported monitoring, the
24 Board staff treated our suggestion as an "offer" rather than recognizing that this is a required
25 element of CAL FIRE's inspection process. The Waiver requirement mandating separate
26 landowner monitoring is duplicative and unnecessary. This combined with what realistically
27 would be a requirement of a landowner to have or have access to a wide range of skills, makes
28 this self reporting both of questionable value and an unjustified and significant expense to

1 landowners.

2 **7. At Least Two Findings in the CEQA Initial Study Supporting the Preparation of a**
3 **Mitigated Negative Declaration for the Waiver are Not Correct.**

4
5 *IX. LAND USE AND PLANNING (From the Initial Study – Page 27)*

- 6 • *Would the project conflict with any applicable land use plan, policy, or regulation of an*
7 *agency with jurisdiction over the project including, but not limited to the general plan,*
8 *specific plan, local coastal program, or zoning ordinance adopted for the purpose of*
9 *avoiding or mitigating an environmental effect?*
- 10 • *Would the project conflict with any applicable habitat conservation plan (HCP) plan or*
11 *natural community conservation plan (NCCP)?*

12 The CEQA Initial Study made a finding of "no impact" on these two questions. But in fact
13 the answer to these two questions is yes. The project would conflict with specific plans such as
14 NTMPs, SYPs, HCPs, and NCCPs. Earlier in this letter we outlined ways in which the Waiver
15 would conflict with existing NTMPs. The Waiver would almost certainly also conflict with
16 existing HCPs in the North Coast Region.

17 Board staff response to these concerns again missed the point CAL FIRE was trying to
18 make and a point that was raised at the hearing in testimony provided by landowners and
19 foresters. It is likely that the action taken by the Board will result in certain cancellation of a
20 portion of these approved NTMPs and a likely conversion to alternative uses. Because of the cost
21 of these measures, landowners who are already stretched by falling timber prices and existing
22 regulatory costs may abandon their NTMPs for alternative land uses, a trend already evident in
23 much of California. This will result in a loss of significant habitat and create potentially
24 significant negative impacts to water quality and other physical conditions as well as contribute
25 negatively to climate change by removing trees which effectively sequester carbon. The Initial
26 Study did not address this possibility nor did it address the potential impacts. CAL FIRE, as well
27 as others who provided written and oral testimony, has presented a fair argument regarding the
28 potential for such impacts which the Initial Study failed to analyze. A finding of "no impact" is
clearly not warranted.

1 It will be CAL FIRE's responsibility to enforce the added Waiver conditions at a
2 significant, unfunded cost. Enforcement could add at least one additional personnel year at a
3 cost to CAL FIRE of \$125,000. The Board has failed to recognize this significant cost burden on
4 CAL FIRE.

5 The discretionary review of project requirements by the Executive Officer will require
6 another project specific CEQA process beyond that already conducted by CAL FIRE at the time
7 the NTMP was approved. Any CEQA process would logically need to be tiered to the original
8 CEQA functional equivalent process the NTMP underwent during the approval process.

9 If this Waiver is allowed to stand, many landowners would likely abandon their
10 NTMPs and possibly seek alternative uses for their land. Conversion of these lands to other uses
11 (e.g. vineyards, subdivision, and commercial developments) is contrary to numerous State
12 policies and objectives and is clearly not in the best interest of the timber, wildlife, water or
13 recreational resources of the State. In particular, the subdivision of forest parcels and their
14 subsequent development for rural residential uses can cause adverse impacts on water quantity
15 and quality. It is also not consistent with global, national and state-based strategies for
16 addressing climate change and greenhouse gases.

17 **(6) Specific Action being requested by the Petitioner**

18 **CAL FIRE is requesting that the State Water Resources Control Board act**
19 **affirmatively on this appeal to have:**

20 (1) the Waiver adopted on June 4, 2009 for Categorical Waiver E be rescinded and the
21 previous waiver be extended for an additional five years, unless it is demonstrated that these
22 approved NTMPs have resulted or could potentially result in Basin Plan violations.

23 (2) the State Water Resources Control Board initiate a process to create a statewide
24 waiver for NTMPs that would bring consistency to the permitting process.

25 (3) in the event the State Water Resources Control Board remands the Waiver to the
26 Board (an option CAL FIRE does not support); (a) the Board conduct a full CEQA analysis in an
27 EIR process, (b) such analysis be based on best available science, current Forest Practice Rule
28

1 application and field monitoring data, and (c) for the interim period, the provisions of the
2 previous waiver be continued resulting in ongoing coverage for NTMPs in the Waiver.

3 **(7) Points and Authorities:** Please reference item (2) and (3) above.

4 **(8) Notification to Regional Board.** A copy of this petition has been submitted in writing and
5 electronically. The written hard copy has been delivered to Mr. Robert Klamt at the North Coast
6 Regional Water Quality Control Board , 5550 Skylane Boulevard, Suite A, Santa Rosa,
7 California 95403.

8 **(9) Statement that substantive issues or objections raised were raised with the Regional**
9 **Board.** All issues raised in this petition, with the exception of the concern regarding the failure
10 of the Board to provide the public adequate notice of changes made during the hearing in order
11 for the public to provide related comments for the Board's consideration prior to adoption of the
12 changes, were raised with the Board in writing and through testimony provided at the hearing by
13 CAL FIRE Deputy Director William E. Snyder. A copy of the adopted Order is attached
14 pursuant to 23 CCR § 2050 and California Water Code § 13320.

15
16 **Signed:**

17
18

19 Ginevra K. Chandler

July 2, 2009

20 **GINEVRA K. CHANDLER**

21 **Chief Counsel**

22
23
24
25
26
27
28

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2009-0038

Categorical Waiver of Waste Discharge Requirements
For
Discharges Related to Timber Harvest Activities
On Non-Federal Lands in the
North Coast Region



The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Board) finds that:

1. California Water Code section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate Regional Board a Report of Waste Discharge (ROWD) containing such information and data as may be required.
2. Pursuant to Water Code section 13260, regional boards prescribe waste discharge requirements except when it finds, pursuant to Water Code section 13269 that a waiver of waste discharge requirements (WDRs) for a specific type of discharge is in the public interest.
3. The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools" (2007 Basin Plan, 4-33.00).
4. In the North Coast Region, discharges of waste resulting from timber harvest activities that pose a low or insignificant threat to water quality are regulated by conditional waivers of WDR. Individual or general WDRs are required for discharges of waste from all other timber activities.
5. In addition, the following waste discharge prohibitions from the Water Quality Control Plan for the North Coast Region (Basin Plan) pertain to timber harvest activities, including; logging, road construction, and associated activities in the North Coast Region:

Prohibition 1: The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

Prohibition 2: The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

6. On June 23, 2004, the Regional Board adopted Order No. R1-2004-0016, Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, and superseded the previous Categorical Waiver (Order No. R1-2003-0116, Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast Region). This Order will supersede Order No. R1-2004-0016 consistent with the transition provisions in section III. This Categorical Waiver is similar to the existing 2004 waiver but makes both minor and substantial revisions and is structurally reorganized for clarity and usability. As described in more detail below, this Categorical Waiver adds conditions designed to meet Basin Plan temperature objectives.
7. This Categorical Waiver defines five categories of timber harvest activities, detailed in the Forest Practice Rules, and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. Implementation and compliance with the general and specific conditions result in timber harvesting projects that are considered to be low impact, and therefore pose no significant threat to water quality.
8. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
 - a. Municipal and Domestic Supply (MUN)
 - b. Agricultural Supply (AGR)
 - c. Industrial Service Supply (IND)
 - d. Industrial Process Supply (PROC)
 - e. Groundwater Recharge (GWR)
 - f. Freshwater Replenishment (FRSH)
 - g. Navigation (NAV)
 - h. Hydropower Generation (POW)
 - i. Water Contact Recreation (REC-1)
 - j. Non-contact Water Recreation (REC-2)
 - k. Commercial and Sport Fishing (COMM)
 - l. Cold Freshwater Habitat (COLD)
 - m. Warm Freshwater Habitat (WARM)
 - n. Wildlife habitat (WILD)
 - o. Preservation of Areas of Special Biological Significance (BIOL)
 - p. Rare, Threatened, or Endangered Species (RARE)
 - q. Marine Habitat (MAR)
 - r. Migration of Aquatic Organisms (MIGR)
 - s. Spawning, Reproduction, and/or Early Development (SPWN)
 - t. Shellfish Harvesting (SHELL)
 - u. Estuarine Habitat (EST)
 - v. Aquaculture (AQUA)
 - w. Native American Culture (CUL)
 - x. Flood Peak Attenuation/Flood Water Storage (FLD)
 - y. Wetland Habitat (WET)
 - z. Water Quality Enhancement (WQE)
 - aa. Subsistence Fishing (FISH)

The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were evaluated as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Categorical Waiver implement these previously developed water quality objectives. Compliance with Water Quality Standards will protect these beneficial uses.

9. Populations of several species of anadromous salmonids listed as threatened or endangered under both the Federal Endangered Species Act or the California Endangered Species Act have declined significantly during the past half century in the majority of waterbodies in the North Coast Region. Degradation of freshwater habitat by land use activities is a major contributing factor to the decline in populations, with discharges of waste from timber harvesting and associated activities among the most significant factors.
10. Harvest methods resulting in intensive canopy removal, such as clearcutting, can cause impacts to water quality from higher and more intensive peak flows, increased surface erosion, and higher rates of mass wasting. Unevenaged management or evenaged management that retains a substantial overstory canopy is less likely to result in adverse impact to water quality. As such, harvesting methods that result in intensive canopy removal are limited under this Categorical Waiver. Intensive canopy removal, such as clearcutting, is allowed under this Categorical Waiver when buffers are provided for streams that are significantly larger than the minimum required under the Forest Practice Rules.
11. Timber harvesting activities on landslides, or on those portions of the landscape that are vulnerable to landsliding, can increase rates of sediment delivery from landslides. This increase in the rate of landslide related sediment delivery can be prevented or minimized by avoiding or minimizing ground disturbance and canopy removal on vulnerable areas, or implementing recommendations made as a result of site characterization by a licensed geologist experienced in slope stability investigations. As such, no timber harvesting activities may be conducted under THPs covered by this Categorical Waiver on landslides and geomorphic features related to landsliding without site characterization and input into Project design by a licensed geologist.
12. Sediment discharge sources, or threatened discharge sources, from past timber harvest activities are present throughout the north coast region and continue to pose risks to water quality. A condition of the Categorical Waiver requires timber harvesting proponents to prepare Erosion Control Plans, which identify controllable sediment discharge sources and implement prevention and minimization measures, thereby eliminating a significant pollutant source from those Project areas.

Impaired Waterbodies and TMDLs

13. Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature (Section 303(d) of the Clean Water Act). Discharges of sediment resulting from past land use activities, with timber harvest being one of the leading sources, are recognized as major contributing factors causing the impaired conditions. Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern.
14. The United States Environmental Protection Agency (EPA) has established sediment TMDLs for 19 watersheds in the North Coast Region. The majority of these TMDLs identified erosion from roads and timber harvest as major contributing factors to sediment discharge from anthropogenic sources and called for significant reductions in such discharges. The EPA includes recommendations to reduce sediment delivery from the major sources identified in those TMDLs. The Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (TMDL Implementation Policy) provides that the Regional Board shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment.
15. The TMDL Implementation Policy also directed staff to develop the Staff Work Plan to Control Excess Sediment in Sediment-Impaired Watersheds (Work Plan) that describes the actions staff are currently taking or intend to take over the next ten years, as resources allow, to control human-caused excess sediment in the sediment-impaired water bodies of the North Coast Region. This Categorical Waiver furthers the objectives defined in the TMDL Implementation Policy and Work Plan. Conditions and eligibility criteria required for enrollment in this Categorical Waiver are intended to contribute to reductions in anthropogenic sediment discharges from the sources identified by EPA and constitute implementation of TMDLs, thus furthering the objectives contained in the Work Plan.
16. The temperature of a stream is significantly influenced by the amount of solar radiation the stream receives. Removing shade canopy in riparian zones can increase the amount of solar radiation that reaches a watercourse, potentially resulting in an increase in water temperature. Canopy retention standards above the minimums established in the Forest Practice Rules and restrictions on shade reduction required under this Categorical Waiver are necessary to meet the Basin Plan temperature objective.
17. The North Coast Regional Board has Temperature TMDLs for 12 watersheds in the north coast region of California. These watersheds include three of the major Klamath River tributaries: the Salmon, Scott, and Shasta River watersheds. The twelve temperature TMDLs have evaluated the effects of shade on stream

temperatures and have consistently reached the same conclusion regarding stream shade. These conclusions are consistent with published literature and temperature analyses conducted in the Pacific Northwest.

The Basin Plan contains the following temperature objectives, which apply to surface waters:

- The natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Board that such alteration in temperature does not adversely affect beneficial uses.
- At no time or place shall the temperature of any COLD water be increased by more than 5°F above natural receiving water temperature.
- At no time or place shall the temperature of WARM intrastate waters be increased more than 5°F above natural receiving water temperature.

18. Given the similarity among the majority of north coast watersheds and the universal nature of the laws of thermodynamics, the conclusions of shade-related analyses from previous temperature TMDLs apply region-wide, and especially to those tributaries not already assigned TMDL shade allocations. In order to protect, maintain, or restore natural water temperature, riparian shade controls are also needed in many watersheds not subject to an existing TMDL Action Plan or in watersheds that are not currently impaired due to elevated water temperatures.
19. The load allocation for excess solar radiation assigned in previous TMDLs is also an appropriate allocation for excess solar radiation to meet the Basin Plan temperature objective in watersheds throughout the North Coast Region. The load allocation for solar radiation is expressed as its inverse, shade. The load allocations for this source category are the shade provided by topography and full potential vegetation conditions at a site, with an allowance for natural disturbances such as floods, wind throw, disease, landslides, and fire. Riparian zone canopy and shade retention standards included as conditions of this Categorical Waiver are intended to preserve natural shade to meet the Basin Plan temperature objectives and constitute compliance with temperature TMDL implementation requirements.

Waiver Categories

20. The General and Specific Conditions of this Categorical Waiver limit the scope of impacts from timber harvesting plans (THPs) approved by CAL FIRE and other CEQA compliant timber harvesting activities so that discharges of waste will be minimized. Further, subsequent CEQA review ensures site-specific mitigation and appropriate project planning to protect water quality. As such, Projects that meet the eligibility criteria for Category F are not expected to pose a significant threat to water quality, and therefore, it is appropriate to conditionally waive waste discharge requirements.

21. Non-industrial Timber Management Plans (NTMPs), as defined in the Forest Practice Rules, are long term management plans, in which tree removal is limited to unevenaged management for small non-commercial timberland owners (2,500 acres or less). As a result, only partial harvesting of these types of timberlands occurs at any one time. With the addition of general and specific conditions required for coverage under this Categorical Waiver, NTMPs are not expected to pose a significant threat to water quality and therefore it is appropriate to conditionally waive waste discharge requirements.
22. Owners and operators of (THPs) in watersheds with approved Total Maximum Daily Load (TMDL) action plans must comply with the requirements of those plans. TMDL action plans are designed to restore the impaired beneficial uses of a polluted body of water. The TMDL process provides a quantitative assessment of water quality problems, contributing sources of pollution, and the pollutant load reductions or control actions needed to restore and protect the beneficial uses of an individual waterbody impaired from loading of a particular pollutant. THPs for which the Executive Officer of the Regional Board has determined to be in compliance with a TMDL Action Plan are not expected to pose a significant threat to water quality. The Garcia watershed is the only TMDL Action Plan that fits this category. Therefore, it is appropriate to waive waste discharge requirements for THPs in the Garcia watershed that meet the Categorical Waiver conditions.
23. Modified THPs, as defined by the Forest Practice Rules, are limited to timberland ownerships of 100 acres or less. The Forest Practice Rules for modified THPs includes restrictions on intensive silvicultural prescriptions, heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are roughly equivalent to the eligibility criteria for THPs as set forth in this Categorical Waiver, and are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive waste discharge requirements for modified THPs meeting Categorical Waiver conditions.
24. California Code of Regulations, title 14, section 1052 allows timberland owners to submit a Notice of Emergency Timber Operations for a Fuel Hazard Reduction emergency when specified conditions are substantiated by the consulting forester. Operations conducted pursuant to an emergency must comply with all applicable Forest Practice Rules. In-lieu practices in riparian zones, exceptions to rules, and alternative practices are not allowed unless necessary to protect public health and safety. Due to the potential harm to public and private resources that could occur if fuel hazard reduction projects are not implemented in a timely manner when necessary, it is in the public interest to waive waste discharge requirements for Emergency Timber Operations.

25. California Code of Regulations, title 14, section 1038 exempts the following timber operations from the plan preparation and submission requirements:
- Harvesting Christmas trees
 - Harvesting dead, dying or diseased trees in amounts less than 10 percent (%) of the average volume per acre
 - Cutting and removal of trees within 150 feet from an improved or legally permitted structure for the purposes of reducing flammable materials and maintaining a fuel break
 - Harvesting dead trees which are unmerchantable from substantially damaged timberlands.

Such exemptions include restrictions on use of heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are roughly equivalent to the eligibility criteria for THPs as set forth in this Categorical Waiver, and are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive waste discharge requirements for these exemptions.

26. California Code of Regulations, title 14, section 1104.1 exempts three categories of timberland conversion from THPs requirements, that when in compliance with all other permitting requirements of the Regional Board and other permitting agencies, are not likely to pose a significant threat to water quality. It is appropriate to waive waste discharge requirements for the following conversion exemptions:
- Conversion of less than three acres in size in one contiguous ownership,
 - Construction or maintenance of right-of-way by a public agency on its own or other public property,
 - The clearing of trees from timberland by a private or public utility for construction of gas, water, sewer, oil, electric, and communications rights-of-way, and for maintenance and repair of the utility and right-of-way.

However, higher potential impacts to water quality can result from conversion for vineyards, construction, and development projects that typically require waste discharge requirements and/or federal dredge and fill permits. These types of conversions are not covered by this Categorical Waiver.

27. Effective January 1, 2004, Water Code section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. This monitoring requirement may be waived for discharges that the Regional Board determines do not pose a significant threat to water quality. The categorical waivers set out herein are only for Projects that do not pose a significant threat to water quality. Discharges that pose a significant threat to water quality are not permitted by this Order. Any project covered hereby that warrants it and meets the criteria of Water Code section 13267(b), however, will be subject to a monitoring program as directed by the Executive Officer.

Regional Board Waiver Fees

28. Pursuant to Water Code Section 13269, the Regional Board may include as a condition of a waiver the payment of an annual fee established in accordance with subdivision (f) of section 13260. Based on consideration of factors established in section 13269 (4)(C), it is appropriate to impose the following fees for the Categories established by this Categorical Waiver:

Categorical Waiver B: Emergency, Exemptions, and 3-acre conversions.

Fees are not appropriate for this category of waiver, as no effect on beneficial uses is expected.

Categorical Waiver C: Projects in the Garcia Watershed.

Fees are not appropriate because applicants enrolling in this Category participate in a watershed management program through a TMDL approved by the applicable Regional Board.

Categorical Waiver E: Nonindustrial Timber Management Plan (NTMP).

A one time application fee, in the amount of \$250, is appropriate. This category requires review of enrollment applications and review of significant amounts of technical information.

Categorical Waiver F: Other Projects (Timber Harvest Plans (THPs) and Other Timber Harvesting Projects). A one time application fee, in the amount of \$250, is appropriate. This category requires review of enrollment applications and review of significant amounts of technical information.

Miscellaneous

29. Pursuant to Water Code section 13269, the waivers of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration; that this action waiving the issuance of waste discharge requirements for certain specific types of discharges (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Board from administering enforcement remedies (including civil penalties) pursuant to the Water Code and other applicable law.
30. The Executive Officer or Regional Board shall terminate the applicability of this Order to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the state.

31. This Order establishing a group of categorical waivers shall not create a vested right, and all discharges covered by it shall be considered a privilege, not a right, as provided under Water Code section 13263.
32. This Categorical Waiver is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Both the state and federal antidegradation policies apply to surface waters in the North Coast Region. The antidegradation policies acknowledge that an activity that results in a minor water quality lowering, even if incrementally small, can result in a violation of antidegradation policies through cumulative effects, especially, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant.
33. On March 7, 2009, the Regional Board provided notice of intent to adopt a mitigated negative declaration (SCH No.2009042053) for the project. (Cal. Code Regs., title. 14, § 15072.) The mitigated negative declaration reflects the Regional Board's independent judgment and analysis. The documents or other material, which constitute the record, are located at 5550 Skylane Blvd, Suite A, Santa Rosa, CA 95403. The Regional Board will file a Notice of Determination within five days from the issuance of this Order.
34. The Regional Board conducted a public hearing on June 4, 2009 in Santa Rosa, California, and considered all evidence concerning this matter and adopted the Negative Declaration, a copy of which is attached hereto, and this Order, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region.
35. Based on the Initial Study and Negative Declaration, the adoption of the waivers of waste discharge requirements for timber harvest activities in accordance with Order No. R1-2009-0038 will be consistent with the Basin Plan, and will be in the public interest.

THEREFORE, after considering the document and comments received during the public review process, the Regional Board hereby determines that the proposed project, with mitigation measures, will not have a significant effect on the environment. The Regional Board hereby approves and adopts the Negative Declaration and Initial Study prepared on this Order, and directs the Executive Officer to file all appropriate notices; and

Order No. R1-2004-0016 is hereby superseded except for application to Projects that have been accepted for filing but not yet approved by the California Department of Forestry and Fire Protection as of the adoption date of Order No. R1-2009-0038. Such Projects are eligible for coverage under Order No. R1-2004-0016 until October 15, 2009, should they qualify under the terms and conditions of that Order. All dischargers subject to categorical waiver of Waste Discharger Requirements (WDRs) under this Order shall comply with the following:

SECTION I: Waiver of Submittal of Reports of Waste Discharge and Waiver of Waste Discharge Requirements for Timber Harvest Projects on Private (Non-Federal) Lands.

This Order sets out general and specific conditions for dischargers to obtain categorical waivers of WDRs for certain timber harvest activities conducted on non-federal lands in the North Coast Region. The Order includes: application procedures, eligibility and submission requirements (Section II), waiver for Projects previously enrolled for a waiver of WDR under Order No. R1-2004-0016 (Section III), termination of coverage (Section IV), and Prohibitions (Section V). Definitions used in this Order are detailed in attachment A.

There are five (5) separate categorical waivers for new Projects (i.e. Projects not previously permitted or waived by the Regional Board). Each waiver category has a set of eligibility criteria, general conditions, and specific conditions when appropriate. The first step in seeking coverage under this Order is to determine if a given Project meets the eligibility criteria for one of five categories. For Projects that meet the eligibility criteria for a given categorical waiver, the Discharger must comply with all the specific conditions detailed in that category, as well as the general conditions necessary to obtain and maintain coverage under all waiver categories, starting with submittal of application documents described in Section II.

General Conditions that apply to all applications for Waiver:

The Discharger shall comply with each of the following conditions for all Categorical Waivers established by this Order:

1. An owner/operator (hereinafter referred to as Discharger) shall file the documents set out in Section I, as appropriate.
2. The Discharger shall comply with all applicable requirements and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board.
3. The Discharger shall allow Regional Board staff entry onto the affected property for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section IV.
4. The Discharger shall comply with a monitoring program, unless waived by the Category of Waiver or in writing by the Executive Officer.
5. The Discharger shall conduct timber harvest activities in compliance with the Forest Practice Rules and a THP or NTMP that has been approved by CAL FIRE. In addition, Forest Practice Rules and THP conditions (including