

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – DIVISION OF WATER QUALITY
AUGUST 4, 2009**

ITEM 7

SUBJECT

CONSIDERATION OF A PROPOSED RESOLUTION DIRECTING STAFF TO DEVELOP A STATEWIDE APPROACH ADDRESSING FOREST ACTIVITIES ON NATIONAL FOREST SYSTEM LANDS, INCLUDING TIMBER HARVESTING, GRAZING, OFF-ROAD VEHICLE RECREATION, AND FIRE SUPPRESSION

DISCUSSION

The U.S. Department of Agriculture, Forest Service (USFS) administers 20.8 million acres of National Forest System (NFS) lands in California in accordance with multiple use mandates. About 15.6 million acres of this is productive timberland. USFS has identified high quality water as the most valuable commodity to be produced from NFS lands, and it is among the highest of USFS environmental priorities. USFS has mandates and resources devoted specifically to protecting and enhancing water quality, watersheds, and riparian areas.

In 1981, the State Water Resources Control Board (State Water Board) took the following actions pursuant to Clean Water Act section 208: 1) certified the document titled "Water Quality Management for National Forest System Lands in California" (including its best management practices [BMPs] for a variety of nonpoint source [NPS] activities conducted on these lands) as a water quality management plan (WQM Plan), 2) designated USFS as the water quality management agency with primary responsibility for implementation of the WQM Plan, and 3) executed a management agency agreement (MAA) with USFS, setting forth the latter's commitment to WQM Plan implementation. The BMPs, which were updated in 2000, address various activities including: 1) timber management, 2) road and building site construction and maintenance, 3) mining, 4) recreation (including marinas and pack-stock), 5) brush-land management, 6) fire suppression and fuels management, and 7) watershed management.

Originally, the WQM Plan was treated as an informal waiver of waste discharge requirements. Due to new statutory mandates regarding waivers, Regional Water Quality Control Boards (Regional Water Boards) have subsequently developed their own region-specific waivers addressing timber harvesting on NFS lands. This has given rise to regulatory redundancy and inconsistency with USFS standards, inconsistencies between regions, and increased regulatory burdens, costs, and uncertainties for USFS. There have also been changes in USFS policies.

USFS has authorities, resources, and expertise that can be very valuable in controlling NPS pollution from activities on NFS lands. The State Water Board seeks to improve the efficiency and effectiveness with which pollution generated by past and present activities on NFS land is controlled, and reduce unnecessary regulatory duplication, workload, conflict, and uncertainty.

The State Water Board plans to revise and update the existing WQM Plan and MAA and to explore new regulatory mechanisms for implementing this plan and agreement.

POLICY ISSUE

Should the State Water Board adopt the resolution to update the existing WQM Plan and MAA, and explore new regulatory mechanisms for implementing them?

FISCAL IMPACT

The resolution, if adopted, will be implemented with existing staff and resources.

REGIONAL WATER BOARD IMPACT

Yes. North Coast, Central Coast, Central Valley, and Lahontan Regional Water Boards.

STAFF RECOMMENDATION

That the State Water Board adopt the proposed resolution.

State Water Board action on this item will assist the Water Boards in: 1) reaching Goal 5 (Improve transparency and accountability by ensuring that Water Board goals and actions are clear and accessible, by demonstrating and explaining results achieved with respect to the goals and resources available, and by encouraging the creation of organizations or cooperative agreements that advance this goal.....) and 2) fulfilling Objective 5.1 (Improve current Water Board programs to enhance effective and consistent implementation of Water Board plans and policies, and State and federal laws and regulations, and to reduce processing time and costs). It will also assist the Water Boards in reaching Goal 6 (Enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures).

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2009-

DIRECTING STAFF TO DEVELOP A STATEWIDE APPROACH ADDRESSING FOREST ACTIVITIES ON NATIONAL FOREST SYSTEM LANDS, INCLUDING TIMBER HARVESTING, GRAZING, OFF-ROAD VEHICLE RECREATION, AND FIRE SUPPRESSION

WHEREAS:

1. The U.S. Department of Agriculture, Forest Service (USFS) administers more than 20.8 million acres of National Forest System (NFS) lands across California in accordance with mandates and authorities set forth in federal statutes, including the following:
 - a) Organic Act, b) Multiple Use-Sustained Yield Act, c) Wilderness Act, and d) National Forest Management Act. About 15.6 million acres of this is productive timberland.
2. These acts mandate multiple uses of NFS lands and sustained production to meet both long- and short-term local, state, regional, and national needs consistent with environmental protection and/or enhancement.
3. USFS has identified high quality water as the most valuable commodity to be produced from NFS lands, and it is among the highest of USFS environmental priorities.
4. Consistent with the federal Clean Water Act (CWA), USFS implements “best management practices” (BMPs) approved by the State Water Resources Control Board (State Water Board) as its primary approach to protecting water quality from the various nonpoint source (NPS) activities which it conducts or administers.
5. Those NPS activities include, but are not limited to, the following: a) timber management, b) road and building site construction and maintenance, c) mining, d) recreation (including marinas and pack-stock), e) brush-land management, f) fire suppression and fuels management, and g) watershed management.
6. The State Water Board and the Regional Water Quality Control Boards [Regional Water Boards] (collectively, the Water Boards) are responsible for implementing the CWA, the federal Coastal Zone Act Reauthorization Amendments (CZARA), and the State Porter-Cologne Water Quality Control Act to ensure that land management activities are conducted in such a manner as to maintain, protect, and restore the quality and beneficial uses of water.
7. In 1981, pursuant to CWA section 208, the State Water Board: a) certified the USFS document titled “Water Quality Management for National Forest System Lands in California” (WQM Plan) including its BMPs, b) designated USFS as the water quality management agency for implementing the WQM Plan, and c) executed a management agency agreement (MAA) with USFS. As a result of the MAA, no requirements for a report of waste discharge and no waste discharge requirements were issued. The BMPs were updated in 2000.
8. Since 1981, there have been some changes in the most important types of pollution-producing activities (e.g., off-road vehicles, grazing) on USFS lands.
9. Since 1981, there have been a number of changes in USFS policies and directives, including Ecological Restoration, and the Travel Management Rule.
10. Since 1981, there have been a number of changes in the Water Boards’ authorities, mandates, and policies, including:

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- a. Regulatory changes imposed by SB 390 (Alpert, 1999), SB 810 (Burton, 2003), and SB 923 (Sher, 2003);
 - b. State Water Board approval, pursuant to CZARA, of the Plan for California's Nonpoint Source Pollution Control Program and the Nonpoint Pollution Source Implementation and Enforcement Policy (NPS Policy);
 - c. The increasing importance and utilization of CWA section 303(d) listings and Total Maximum Daily Load requirements; and
 - d. The increasing number of listings of anadromous salmonids pursuant to the State and federal Endangered Species Acts.
11. Climate change has become an important factor in determining necessary water quality and habitat protection requirements and forests play an integral role in carbon sequestration.
 12. Excessive fuel loads in California's watersheds can increase the risk and magnitude of wildfire and their associated detrimental effects.
 13. The expertise, resources, and authorities of USFS can be an invaluable asset to the Water Boards in maintaining water quality where it is in good condition, protecting it where it is threatened, and contributing to its restoration where it is impaired.
 14. The State Water Board desires:
 - a. To achieve the goals of the CWA, the Porter-Cologne Water Quality Control Act, and CZARA;
 - b. To minimize duplication of effort and unnecessary regulatory burdens;
 - c. To accomplish water pollution control and environmental restoration in the most efficient and effective manner; and
 - d. To enhance transparency and accountability through coordinated and consolidated water quality monitoring and reporting program requirements.
 15. A more streamlined and consistent statewide approach would benefit the USFS by:
 - a. Allowing it to address problems in a manner more consistent with its own policies and programs and with greater self-determination;
 - b. Encouraging statewide prioritization of objectives for cleanup of legacy problems, and for improving the condition of impaired beneficial uses of water;
 - c. Standardizing monitoring programs and unifying reporting requirements; and
 - d. Allowing uniform and consistent statewide management by an agency that operates statewide and across Regional Water Board boundaries.
 16. A more streamlined and consistent statewide approach would benefit the Water Boards by:
 - a. Centralizing statewide program administration and reporting;
 - b. Greatly reducing the number of different waste discharge requirements and/or waivers to be administered and periodically renewed;
 - c. Maximizing the efficient use of USFS expertise, resources, and authorities for water quality protection; and
 - d. Freeing the Regional Water Boards to use their resources in the field with the USFS directly managing rather than preparing and adopting orders or plans.

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17. A more streamlined and consistent statewide approach would benefit the quality and beneficial uses of water by:
 - a. Allowing USFS and Water Boards' resources to be collaboratively focused where the need and potential benefits are greatest; and
 - b. Allowing more effort and funding to be devoted to on-the-ground improvements.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Intends to combine current Regional Water Board requirements for NFS lands into a single statewide regulatory approach that accommodates appropriate regional differences.
2. Intends to work together with USFS and the Regional Water Boards to revise and update the WQM Plan that will guide USFS actions for maintaining, protecting, and contributing to restoration of the quality and beneficial uses of water. The State Water Board and USFS will be the principal parties with input from the Regional Water Boards.
3. Will solicit comments and recommendations from all interested parties.
4. Intends to use the revised WQM Plan, including a process for addressing regional differences, as the basis for a statewide waste discharge requirement or conditional waiver of waste discharge requirements for the set of activities covered by the revised WQM Plan, and will use this regulatory mechanism to replace all those currently employed by the Regional Water Boards.
5. Establishes as a goal that this process and the statewide regulatory approach be ready for State Water Board consideration within 18 months from the date of this resolution.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on August 4, 2009.

Jeanine Townsend
Clerk to the Board