

ITEM: 9

SUBJECT: Conditional Waiver of Waste Discharge Requirements Related to Timber Harvesting Activities, Proposed Renewal of Order No. R5-2010-0022

Conditional Waiver of Waste Discharge Requirements Related to Timber Harvesting Activities within the Central Valley Region

BOARD ACTION: *Consideration of Adoption of Order R5-2014-xxxx to Renew Conditional Waiver*

BACKGROUND: Resolution No. R5-2005-0052, adopted on April 28, 2005, included a comprehensive conditional waiver of waste discharge requirements (Waiver) for numerous timber related activities on both federal and private lands. It also included a comprehensive Monitoring and Reporting Program. The Waiver as adopted by the Central Valley Water Board utilizes existing regulatory programs in place and administered by CAL FIRE and the U.S. Forest Service but requires implementation of additional measures (beyond those required by those agencies) where necessary to comply with Basin Plan requirements. The Waiver contains detailed eligibility criteria and conditions specific to the type of timber activity proposed. The Waiver was renewed on March 31, 2010.

In order to qualify for the Waiver, the project applicant must agree to meet all criteria and conditions as well as to conduct and report on the required monitoring. The Waiver is scheduled to expire on March 31, 2015.

There are 5 conditional categories in the Waiver, the first 4 apply to projects on non-federal lands and the last category applies to projects on U.S. Forest Service lands:

- Category 1 is for “de-minimus” activities where the risk of discharge to surface water is minimal.
- Category 2 is for Emergencies and Exemptions (as defined by the California Board of Forestry’s Forest Practice Rules); short-term permits subject to specific operational limitations that receive limited environmental review.
- Category 3 is for timber harvesting plans (THPs) and non-industrial timber management plans (NTMPs) that represent a higher risk of discharge to surface water and that have Regional Board presence in the field.
- Category 4 is for those THPs/NTMPs that would otherwise fit under Category 3 except that Regional Board staff was unable to provide a field presence during the review process.

This category requires additional management measures.

- Category 5 is specifically for timber harvesting and fuel management projects on U.S. Forest Service land.

Assembly Bill 1492, signed by Governor Brown on 11 September 2012, established the Timber Regulation and Forest Restoration Fund and as such eliminates the ability of agencies to charge fees for activities associated with the review of a harvesting project, inspection and oversight of harvesting projects, and permits necessary to conduct timber harvesting operations.

Staff believes the Waiver is still *"in the public interest"* based on its "proactive" approach and maintains that the Waiver is an effective mechanism for regulating the nearly 2,000 timber harvesting projects submitted annually in the Central Valley Region.

ISSUES:

The California Board of Forestry (BOF) was mandated by AB 904 to create two new types of permitting for timber harvesting, the Working Forest Management Plan (a non-expiring permit for non-industrial landowners of up to 15,000 acres), and the Modified Non-industrial Timber Management Plan (for contiguous ownerships of no more than 320 acres). The BOF is required to implement these permits by January 2016 and the proposed Waiver renewal period will allow Central Valley Water Board staff time to develop an appropriate permitting path for these two new project types.

The 4 public comments received indicate support for the renewal with one timber industry landowner suggesting renewing the Waiver for five years rather than three years, to allow for unforeseen delays in the WFMP approval process, and an additional time buffer for adoption of a new Order.

One timber industry landowner suggests changing the Forensic Monitoring from two inspections per year (one after 5 inches of total precipitation has fallen and one after 15 inches of total precipitation) to one inspection per year (after 10 inches of total precipitation).

The Order was altered for clerical changes and OCC formatting updates.

RECOMMENDATION: Regional Board staff recommends renewing the proposed Order with Attachments A, B and C for a period of three years to allow staff time to address these two permits.

Mgmt. Review _BJS_____

Legal Review _____

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