

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

**MEETING OF NOVEMBER 13-14, 2013
SOUTH LAKE TAHOE**

ITEM: 11

SUBJECT: **POTENTIAL UPDATES AND CLARIFICATIONS FOR THE 2009
TIMBER WAIVER RENEWAL**

CHRONOLOGY: January 2003 Water Board adoption of the first Lahontan
Timber Waiver.

February 2007 Water Board renewed the Timber Waiver.

May 2009 Water Board certified a Mitigated Negative
Declaration environmental document and
adopted the 2009 Timber Waiver

DISCUSSION: The California Water Code states that conditional waivers of waste
discharge requirements be renewed every five years. The 2009
Timber Waiver has been working well for Water Board staff and
project implementers, but several portions of the Timber Waiver
could be improved.

Potential improvements include updates based on recent research
of silvicultural activities, clarifications of requirements for easier
implementation and enforcement, removal of redundancy for
streamlining, and consistency and efficiency in monitoring and
reporting.

Staff will identify and discuss the following three main issues for
potential updates and ask for input from the Water Board and public
on the potential updates:

1. Need to replace the technically intensive soil operability criteria
with a performance standard that is simpler to implement while
not diminishing the level of water quality protection.
2. Regarding slash piling and burning in stream environment
zones in the Tahoe Basin, need to update the specific
conditions to reflect current research, and provide a prohibition
exemption within the Timber Waiver for projects meeting
specific criteria.
3. Improve the consistency and usefulness of the monitoring and
reporting program for all Timber Waiver enrollees.

Water Board staff have been working with silvicultural project implementers, primarily the US Forest Service Lake Tahoe Basin Management Unit, on various options for improving the Timber Waiver. Through December 2013, Water Board staff is planning additional stakeholder meetings and outreach sessions across the Lahontan Region to gather input on the range of issues and potential updates to improve the Timber Waiver.

After collecting initial input from stakeholders, Water Board staff will draft tentative changes and forward those changes for an independent, scientific peer review. If the peer review determines the scientific research supports the tentative changes, then a proposed draft Timber Waiver will be circulated for public comment. Water Board staff expects to propose an updated Timber Waiver to the Water Board for adoption consideration at a public meeting in 2014.

**RECOMMEND-
ATION:**

No action at this time, but Water Board members may provide input or direction to staff on Timber Waiver issues that may need amendment and/or the assessment of environmental impacts associated with the potential amendments.

Enclosure	Description	Bates Number
1	Staff Report outlining potential updates and clarifications to the 2009 Timber Waiver	11-5

ENCLOSURE 1

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LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD MEETING OF
NOVEMBER 13-14, 2013

ITEM 11
Staff Report

POTENTIAL UPDATES AND CLARIFICATIONS TO THE 2009 TIMBER WAIVER

INTRODUCTION

The Lahontan Regional Water Quality Control Board (Water Board) adopted the current Timber Waiver in May 2009, and it expires in May 2014. Fire districts, small private landowners, industrial timber companies, and state and federal land management agencies have regularly used the Timber Waiver each year. Since 2009 over one hundred projects have enrolled under Categories 4, 5, and 6 of the Timber Waiver, while countless projects have been covered under Categories 1, 2, and 3; these are countless because the 2009 Timber Waiver does not require those activities with low risk to water quality to be reported to the Water Board. The 2009 Timber Waiver has succeeded in permitting forestry projects in a streamlined manner.

During the implementation of the Timber Waiver, staff have identified sections in the Timber Waiver that are either vague, duplicative of existing requirements, unnecessarily burdensome to staff or operators, or outdated because of recent scientific research. These sections can be improved with streamlined processes, clarifications/corrections, incorporation of new research, and improved monitoring requirements.

Water Board staff will summarize issues identified to date with the current Timber Waiver and discuss potential options for improving it. This item is informational. The Water Board will not be asked to take action at the November meeting but may provide direction to staff. The public may also provide input on issues and ideas for improvements. Water Board staff have planned public outreach workshops over the next few months across the region to solicit feedback on the issues and assistance on drafting potential amendments. Staff will review the feedback, draft a tentative revised Timber Waiver and then submit the tentative changes, along with published research supporting the revisions, for external scientific peer review. If the peer review determines the scientific research supports the tentative changes, then a proposed draft Timber Waiver will be circulated for public comment. Staff expects to propose an updated Timber Waiver to the Water Board for adoption consideration at a public meeting in 2014.

Overview of Timber Harvest and Vegetation Management Regulation in California

The 2009 Timber Waiver provides regulatory coverage to commercial and non-commercial timber harvest and fuel reduction and vegetation management activities. The 2009 Timber Waiver applies to projects on both private and public lands within the Lahontan Region. Commercial harvest activities on private lands in California are subject to the California Forest Practice Rules (FPRs) and are regulated through a multi-agency, multi-disciplinary process that has been determined to be the functional equivalent to an Environmental Impact Report under the California Environmental Quality Act (CEQA). This process is called the Timber Harvest Plan Review Team and is comprised of California Department of Forestry and Fire Protection (Calfire), the California Regional Water Board, and the California Department of Fish and Wildlife. The FPRs have robust descriptions for allowable silviculture prescriptions, watercourse classification and buffer widths, road and watercourse crossing construction and reconstruction practices, and wet weather operations. Calfire is the CEQA Lead Agency for approving timber harvest plans through the Review Team process and the Regional Water Board provides regulatory coverage through Waste Discharge Requirements or a Conditional Waiver of Waste Discharge Requirements. The Timber Waiver is the Water Board's regulatory mechanism for timber harvest and vegetation management activities within the region.

The FPRs do not apply to federal agencies, nor do they apply to some non-commercial vegetation management activities on non-federal public lands. The U.S. Forest Service (USFS) has national best management practices that apply to the implementation of timber harvest and vegetation projects. The Timber Waiver is the Water Board's mechanism for regulating timber harvest and vegetation management activities on public lands within the region.

ISSUE 1: Operable Soil Conditions for Mechanized Equipment

Background

The 2009 Timber Waiver lists specific ground conditions and detailed procedures for determining if mechanized equipment can operate off roads and within sensitive lands. These sensitive areas include water body buffer zones that are applied region wide, and stream environment zones (SEZs) in the Lake Tahoe hydrologic unit. Harvesting equipment operation within these areas is limited to times when soils are dry to a depth of twelve inches and equilibrated groundwater levels are at least two feet below the soil surface. Dry soils are defined as dry, loose, and which will not form a ball when squeezed by hand.

Issue 1 Detail

These detailed procedures and specific ground conditions may be overly burdensome and unnecessary to protect water quality. The intent of this level of specificity was to have a process that was clear, provided repeatable results, and ensured the harvesting equipment operation did not compact the soils, thereby decreasing the infiltration capacity.

With the high variability of soils and depths to groundwater, staff and operators have found these requirements challenging to pinpoint, which has resulted in time-consuming subsurface investigations by the project implementers and additional time spent by staff follow-up in the field. A “squeeze test” approach is used to determine if soils are dry enough for operations. The “squeeze test” involves a qualified technician scraping surface duff off the ground surface and then picking up a sample of representative soil and squeezing it into a ball. Different soil composition and moisture levels influence whether a soil ball will have sufficient cohesive properties to hold the ball together when tossed gently into the air and then caught in the technician’s hand. Staff and project implementers have found this test to provide inconsistent results because the soil moisture and soil type is highly variable across a project site, and typically a natural resource specialist or soil scientist is needed to interpret the field test results.

Waiting for soils to completely dry out and for groundwater levels to drop more than 24 inches deep, may unnecessarily shorten the operable days. Recent research and past experience suggests that the moisture content between the two to ten inch depth of soil is the key factor in determining if soils may be subject to compaction from heavy equipment. The requirement that soils be dry from the surface to a twelve inch depth is overly restrictive and has the potential to halt operations during and after summer and fall precipitation events that only wet the uppermost soil surface.

Option

For a more practical condition, the dry soil condition requirement should be changed to a requirement that would prohibit visible disturbance of the ground. Limiting the maximum depth and length of tire or track ruts is a more practical method to prevent significant soil compaction and soil deformation. This change would remove the subjectivity of the “squeeze test”, remove the requirement to determine the groundwater depth, and replace these details with a performance standard that is less complicated to comply with and enforce.

ISSUE 2: Piling and Burning of Slash in Lake Tahoe Basin SEZs

Background

The 2009 Timber Waiver requires the Water Board to issue an individual Basin Plan Prohibition Exemption to allow project implementers to place, cure, and subsequently burn slash piles within Tahoe Basin SEZs. Because the issuance of a Basin Plan Prohibition Exemption is a discretionary action by the Water Board, the proposed action must be supported by project specific environmental documentation that is prepared pursuant to the California Environmental Quality Act (CEQA). Since the 2007 Angora Fire there has been a significant increase in fuel reduction activities in the wildland urban interface (WUI) surrounding Tahoe Basin communities. Much of the work has been conducted using hand crews, due to restrictions on equipment use in SEZs and in areas where topography or access preclude equipment use. Currently there are thousands of slash piles curing in the WUI and there are hundreds of acres planned for this type of treatment.

Issue 2 Detail

Prior to the 2007 Angora Fire most Tahoe Basin fuels treatments avoided treatment in SEZs. Since the 2007 Angora Fire there has been a significant increase in Tahoe Basin WUI treatments and SEZs have been included in the treatment areas. Because pile burning in SEZs had not occurred prior to adoption of the 2009 Timber Waiver and there was limited scientific study on this, the 2009 Timber Waiver included detailed requirements and specific restrictions on piling and burning. Recent research supports the inclusion of pile burning in SEZs, if adequate measures to prevent permanent impacts to SEZs are included in the project's implementation plans.

Factors that affect the impacts of pile burning include the composition of the biomass material in the pile, the moisture level of the biomass, the soil moisture level when piles are burned, soil seed banks, and soil chemical and water-holding properties. Simple rehabilitation treatments are effective at ameliorating some of the negative impacts of slash pile burning, and in preventing the invasion of exotic plant species in the burn scars that result after pile burning. Such treatments include scarifying, mulching, and/or seeding burn scars to aid in the re-vegetation of the area. Scarifying burn scars improves water infiltration, seeding helps to replenish native seed banks that were lost during pile burning, and mulching aids in conserving soil moisture and moderating summer soil temperatures. Mulching also offsets burning impacts to soil chemistry and may inoculate soils that were sterilized during pile burning.

Preparing an individual Basin Plan prohibition exemption has been a significant expenditure of staff resources. The Water Board adopted the 2009 Timber Waiver after certifying a Mitigated Negative Declaration environmental document. That environmental document concluded that if the slash piling and burning were conducted in a specific manner, that the impacts would be less than significant. The 2009 Timber Waiver listed all the specific slash piling and burning conditions but still required that a separate prohibition exemption be obtained. This step of obtaining a separate prohibition exemption is duplicative and unnecessary because the specific conditions are listed in the Timber Waiver for the slash piling and burning and the Mitigated Negative Declaration already evaluated impacts from these activities and made a determination that impacts would be less than significant.

The specific conditions listed in the Timber Waiver should be updated to reflect the findings of recent research and studies which includes a determination that pile composition rather than size is a key factor influencing the magnitude and duration of the burn scar and the length of time for vegetative regrowth.

Option

Text can be added to the Timber Waiver that clarifies and defines the criteria for placing slash piles within SEZs and for permanent disturbance related to pile burning. The Timber Waiver can be revised to specify a suite of management measures that must be implemented before and after pile burning within SEZs to ensure that burn scars do not persist as evidenced by vegetative regrowth within a certain timeframe. A category for piling and burning slash in Tahoe Basin SEZs can be added to the list of “automatic” prohibition exemption activities, along with specific conditions for the piling and burning. The Timber Waiver monitoring program will include evaluation and documentation of vegetative recovery within burn scars.

ISSUE 3: REVISE TIMBER WAIVER MONITORING AND REPORTING PROGRAM

Background

The 2009 Timber Waiver prescribes a Monitoring and Reporting Program for certain types of activities. The 2009 Timber Waiver divided all silvicultural activities into one of six categories. Projects enrolled in waiver categories 1, 2, and 3 are considered to have low threat or risks to water quality and monitoring was not required. For activities that are covered in categories 4, 5, and 6, the 2009 Timber Waiver includes optional monitoring reporting forms for enrollees to submit the required information. The 2009 Timber Waiver also included a provision that allows the USFS to comply with an alternative monitoring program which uses the USFS’s Best Management Practice Evaluation Program (BMPEP) to satisfy the waiver’s monitoring requirements.

Issue 3 Detail

During the years since the 2009 Timber Waiver was adopted other permits have been adopted by the State and Regional Water Boards that include monitoring and reporting programs. The MRPs that have been adopted as part of these other permits are consistent for all enrolled dischargers and many MRPs contain specific forms that must be used and submitted to report the information. Because the forms and required information are standardized under these other permits, the permittees have regulatory certainty in knowing exactly the information that is required, and the data is comparable across projects. The standardization has resulted in consistent expectations and repeatable results, which has streamlined the data collection and review of the monitoring information.

The 2009 Timber Waiver has a provision that allows National Forests within the Lahontan Region to satisfy some of the waiver's MRP requirements through their Best Management Practice Evaluation Program (BMPEP) process. Because the MRP forms are optional, Water Board staff has received many different types of submittals intended to meet the MRP requirements. The inconsistency in standardized forms has made it challenging for Water Board staff to assess each project for compliance with Timber Waiver requirements and difficult to compare projects.

A new law, AB 1492, took effect in January of 2013, which requires CA regulatory agencies to report back to the legislature on their oversight of forestry projects. The current Timber Waiver's MRP, with optional use of the forms, does not effectively provide the information for Water Board staff to efficiently and adequately meet the AB 1492 reporting requirements.

Before all project implementers use the same forms in the Timber Waiver's MRP, the forms need updating to ensure the information required is relevant and helpful for the project implementers to adaptively manage and improve the projects and be helpful for Water Board staff review and assessment of water quality protection measures.

Other programs, such as the NPDES Storm Water program, contain an MRP which applies to every applicant and the data obtained can be compared to similar permitted projects. Because that MRP applies to everyone, the permittees, regulatory agencies, and the interested public know what is required and what reporting information should be expected. Having a consistent MRP increases efficiencies and expectations, while resulting in comparable information.

Option

Revise the timber waiver to require that all enrollees comply with the same MRP and require use of the monitoring forms in the Timber Waiver.