

California Regional Water Quality Control Board
North Coast Region

ORDER R1-2013-0005

Waiver of Waste Discharge Requirements
For
Timber Operations on Non-Industrial Timber Management Plans (NTMP)
in the
North Coast Region

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

1. This Order replaces Category E of Order R1-2009-0038, *Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands* (2009 Waiver). It conditionally authorizes discharges of waste associated with timber operations on Non-Industrial Timber Management Plans (NTMP) provided that landowners fully and properly implement forest practice rules (FPRs) designed to protect water quality. Compliance with the Order's conditions will protect beneficial uses of water from NTMP timber operations and provide regulatory efficiency to state agencies and NTMP landowners.
2. The Water Quality Control Plan for the North Coast Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes programs of implementation to achieve water quality objectives.
3. 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. 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 consistent with a regional water quality control plan and is in the public interest.
4. On June 4, 2009, the Regional Water Board adopted the 2009 Waiver, which renewed Order R1-2004-0016 (2004 Waiver). The 2009 Waiver included revised and additional conditions for NTMPs, including for those NTMPs previously enrolled under the 2004 Waiver.
5. Under the Forest Practice Act (Public Resources Code sections 4511-4628), NTMPs are long term plans for landowners with less than 2,500 acres of timberlands managed with an objective of an uneven aged timber stand and sustained yield

(Forest Practice Act section 4593.2). The California Department of Forestry and Fire Protection (CAL FIRE, formerly CDF) is the lead agency in approving NTMPs, with assistance from a multi-agency review team that includes representatives of the California Department of Fish and Wildlife (formerly Department of Fish and Game), the Regional Water Board, the California Geological Survey, and other agencies as specified in FPR Section 1037.5. As described in more detail below, timber operations under an approved NTMP must adhere to the FPRs. The FPRs contain requirements including management practices designed to prevent sediment discharge, canopy retention standards in designated watercourse and lake protection zones, sediment loading measures, and provisions for recruitment of large woody debris. (Cal. Code Regs., tit. 14, §§895 *et seq.*¹)

6. The Regional Water Board adopted Order R1-2009-0038 in June 2009, prior to the Board of Forestry's adoption of revisions to the FPRs referred to as the Anadromous Salmonid Protection (ASP) rules, which came into effect on January 1, 2010. In July, 2009, the State Water Resources Control Board (State Water Board) received three petitions filed by a landowner group, several non-governmental organizations, and CAL FIRE, respectively. The petitioners alleged that the new NTMP conditions in the 2009 Waiver would impose unnecessary additional burdens on CAL FIRE and on NTMP landowners.
7. The Regional Water Board did not intend for the 2009 Waiver to create unnecessary regulatory burdens on CAL FIRE or NTMP landowners, or to create conditions that are duplicative of FPRs. It was the Regional Water Board's intent to include NTMP conditions to implement Total Maximum Daily Load (TMDL) allocations for sediment and temperature, to accommodate site-specific circumstances, and to provide regulatory consistency in areas where the FPRs protect the beneficial uses of water.
8. In March 2011, the Regional Water Board adopted Order R1-2011-0038, which temporarily suspended the new NTMP conditions established in the 2009 Waiver. The temporary suspension was deemed necessary to allow Regional Water Board staff time to conduct a thorough review of NTMP water quality protections provided by the FPRs, including the ASP rules.
9. Regional Water Board staff has undertaken a rigorous effort with NTMP landowners, CAL FIRE and other interested parties to review the effectiveness and implementation of the existing FPRs in protecting and restoring the beneficial uses of water, particularly in areas designated as impaired by excess sediment and/or temperature under section 303(d) of the Clean Water Act. The results of Regional Water Board staff's review of water quality protection provided for NTMPs are summarized in findings 12 through 20 below.

¹ Citations to the Forest Practice Rules contained in title 14 of the California Code of Regulations will be indicated by "FPR" followed by the relevant section number.

10. NTMPs range in size from 8 acres to over 2,500 acres over multiple ownerships.² To date, CAL FIRE has approved approximately 540 NTMPs in the North Coast Region, encompassing approximately 250,000 acres. This represents less than 2% of the total land base of the region. Under the FPRs, timber operations on an NTMP can commence when a landowner submits a Notice of Timber Operations (NTO) to CAL FIRE, which is valid for one year and may cover any portion of an NTMP area. (Forest Practice Act section 4594). CAL FIRE's authority to enforce the FPRs applies to active NTOs and a maintenance period of up to three years following completion of operations. (See FPR §916.9(p)/ 936.9(p).³) Frequency of harvesting varies; some NTMP landowners submit NTOs yearly while others harvest infrequently or not at all. Approximately 112 approved NTMPs in the North Coast Region have never filed an NTO.
11. NTMPs follow a similar review and approval process as THPs. However, NTMPs do not expire and, unless amended, remain subject to the FPRs in effect at the time of CAL FIRE approval. Unlike THPs, NTMPs must be managed with the objective of uneven aged management and sustained yield. Sustained yield requires a balance between growth and harvest. Uneven aged management allows harvesting only individual or small groups of trees (less than 2.5 acres) at any given time, retaining a significant component of the forest stand after harvesting. Uneven aged harvesting minimizes potential changes in runoff patterns and peakflow that can impact beneficial uses of water. The potential for increased sediment discharge from landslides is also reduced by retaining root strength on vulnerable hill slopes. Long-term forest management of NTMPs results in post harvest conditions that more closely resemble natural conditions than those following more intensive evenaged management such as clearcutting. Uneven aged silviculture is considered to result in lower potential for adverse impacts to water quality than those associated with more intensive evenaged management activities.⁴
12. FPRs regulating timber operations for NTMPs contain rules for protection of the beneficial uses of water, as well as enhanced protection in watersheds with listed anadromous salmonids. One of the stated goals of the FPRs is to implement the Forest Practice Act in a manner consistent with the Porter Cologne Water Quality Act. (See FPR §896.) CAL FIRE must disapprove a plan if it is likely to violate the

² Six NTMPs in the North Coast Region exceed 2,500 acres in size. In these cases, a single NTMP encompasses multiple properties, whose owners individually own no more than 2,500 acres of timberland each.

³ Non-federally owned commercial forest areas of the state are divided into three districts. The majority of the North Coast Region coincides with the Coast Forest District. Northeastern portions of the North Coast Region in Shasta, Siskiyou, Trinity, Modoc, and Glen County coincide with the Northern Forest District. Different rule sections apply to each forest district. Therefore, when two FPRs section numbers are shown separated by a forward slash, it refers to rules applying to the Coast and Northern Forest Districts, respectively.

⁴ Approximately 15 percent of NTMPs utilize transition (FPR §913.2(a)) or rehabilitation of understocked area (FPR §913.4(b)), or variable retention (FPR §913.4(d)) silviculture methods during the first harvest cycle. These methods result in more intensive tree removal than selection harvesting and are designed to increase long term productivity on timberlands that are poorly stocked due to past management practices. Regional Water Board staff may recommend additional site-specific protection measures to address potential impacts to the beneficial uses of water from transition or rehabilitation of understocked area silviculture methods.

Basin Plan. (FPR §898.2.) The FPRs provide measures designed to prevent sediment discharge. (See FPR §914.2/ 934.2 [limiting tractor operations on steep or unstable slopes; §923/943 [prescriptions for construction, reconstruction, use, maintenance, and decommissioning of roads and landings; §916.4/ 936.4 [requiring evaluation of sites that could adversely impact beneficial uses of water and treatment of such sites when feasible].) The FPRs also provide measures to limit reductions in riparian shade that are designed to protect water temperature. Regional Water Board staff continue to work with the Board of Forestry and Fire Protection, the government body charged with developing and revising the FPRs as well as CAL FIRE, timberland owners, and other stakeholders, to identify ways to improve rules for protection of the beneficial uses of water.

13. In 2000, the FPRs were revised to include sections 916.9 /936.9 (*Protection and Restoration in Watersheds with Threatened and Impaired Values*) and 923.9 and 943.9 (*Roads and Landings in Watersheds with Threatened and Impaired Values*). These rules, collectively referred to as the “T&I” rules, were based in part on recommendations from a 1999 report by a scientific review panel on FPRs and salmonid habitat as well as on a proposal by staff from the Lahontan, Central Valley, North Coast Regional Water Boards and the State Water Board. The T&I rules were designed to enhance sediment control, riparian shade canopy retention and recruitment of large wood for protection of listed anadromous salmonids and apply to NTMPs approved after July 1, 2000. CAL FIRE approved 217 NTMPs in the North Coast Region prior to July 1, 2000. These NTMPs were not subject to the T&I rules. The T&I rules were updated and renamed the Anadromous Salmonid Protection (ASP) rules, and apply to NTMPs in watersheds with listed anadromous salmonids approved on or after January 1, 2010. With the exception of a very small number of NTMPs outside of watersheds with anadromous salmonids, including some small coastal tributaries with natural barriers to anadromy, the majority of NTMPs in the North Coast Region approved after July 1, 2000 are subject to T&I and/or ASP rules.
14. The T&I and ASP rules are generally protective of shade and water temperatures in the areas where they apply. (See Resolution R1-2012-0013 [Policy Statement for the Implementation of the Water Quality Objective for Temperature], finding 29.) FPRs relevant to water quality protection include the following rule sections:

Sections 916.9/936.9 and 923.9/943.9

Sediment Control:

- requires identification and treatment of active erosion sites in the logging area where feasible;
- requires three year erosion control maintenance period;
- increased requirement for stabilization of disturbed soil in WLPZs; and
- limits logging road and skid trail use during wet weather.

Shade Canopy and Large Wood Recruitment:

Section 916.9/936.9 specifies Watercourse and Lake Protection Zones (WLPZ) widths and minimum riparian canopy retention levels on some streams that exceed those allowed under the standard rules. This section also requires retention of large trees in the WLPZ for recruitment of in-stream large wood.

15. Approximately 99% of NTMPs in the North Coast Region are in watersheds where rules for protection of listed anadromous salmonids apply. Under an NTMP approved prior to implementation of the T&I rules, landowners must demonstrate that their operations adequately address protection of listed anadromous salmonids prior to conducting harvesting operations. Based on field evaluations and review of NTMP files, Regional Water Board staff have found that the majority of NTMPs that were approved prior to implementation of the T&I rules have either been amended to comply with the T&I or ASP rules, or operations are conducted in a manner that implements water quality protection with measures similar to those required by the ASP rules.
16. When submitting an NTO under FPR Section 1090.7, Registered Professional Foresters (RPFs) must certify that the following conditions exist, or amend the plan if necessary to meet those conditions:
- A statement that no listed species has been discovered in the cumulative impacts assessment area since the approval of the NTMP.
 - A statement that there have been no physical environmental changes in the cumulative impacts assessment area that are so significant as to require any amendment of the NTMP.
 - That the notice as submitted will carry out:
 - The best management practices for the protection of the beneficial uses of water, soil stability, forest productivity, and wildlife as required by the current FPRs, or
 - Is consistent with the plan and will not result in significant degradation of the beneficial uses of water, soil stability, forest productivity, or wildlife or be in violation of applicable legal requirements.
17. Monitoring inspections conducted by CAL FIRE of over 580 THPs between 1996 and 2004 found post-harvest canopy levels in Class I and II Watercourse and Lake Protection Zones (WLPZ) to average at least 80%⁵. In addition, during the joint field evaluations of NTMPs described in Finding 19, CAL FIRE staff measured post harvest WLPZ canopy on 19 randomly selected 200 foot long Class I and II WLPZ segments. Average post harvest riparian shade canopy levels were found to exceed 80% on plans that complied with the standard FPRs as well as those that met the standards of the T&I and ASP rules. The Regional Water Board has consistently maintained that minimum shade canopy retention on streams allowed under the

⁵ Brandow, C.A., P.H. Cafferata, and J.R. Munn. 2006. Modified completion report monitoring program: monitoring results from 2001 through 2004. Monitoring Study Group Final Report prepared for the California State Board of Forestry and Fire Protection. Sacramento, CA. 85 p. Available at: http://www.fire.ca.gov/CDFBOFDB/pdfs/MCRFinal_Report_2006_07_7B.pdf

Cafferata, P.H., and J.R. Munn. 2002. Hillslope monitoring program: monitoring results from 1996 through 2001. Monitoring Study Group Final Report prepared for the California State Board of Forestry and Fire Protection. Sacramento, CA. 114 p. Found at: http://www.bof.fire.ca.gov/pdfs/ComboDocument_8_.pdf

FPRs as low as 50% following harvest may not be adequate to ensure compliance with the Temperature objective. However, average post-harvest riparian canopy levels measured in these inspections (~80%) are generally adequate to meet the Basin Plan Temperature objective. NTMPs can and have generally complied with the Temperature objective through utilization of uneven aged forestry, compliance with or exceedence of the applicable rules for watercourse protection and consideration by RPFs of potential temperature impacts when harvesting trees providing shade to watercourses.

18. The FPRs require RPFs to evaluate NTMP logging areas for conditions that could adversely impact the beneficial uses of water. The RPF must also provide a description of the management measures that will be implemented to protect and restore the beneficial uses of water to the extent feasible. (FPR §916.4.) In order to ensure that measures designed to protect the beneficial uses of water are properly implemented as required by the FPRs, in 2004 the Regional Water Board began requiring landowners to develop and submit Erosion Control Plans (ECPs) for an NTO or entire NTMP as a condition for waivers of waste discharge requirements. ECPs require landowners to prepare and submit to the Regional Water Board the following:
- an inventory of Controllable Sediment Discharge Sources (CSDS)⁶;
 - a prioritization and implementation schedule for treatment of each site based on potential impacts to the beneficial uses of water; and
 - a plan to inspect the logging area after operations and provide a record of the results to the Regional Water Board upon request.
19. In 2011, Regional Water Board and CAL FIRE staff conducted joint field evaluations of 23 NTMPs for effectiveness of FPR implementation to determine the extent to which ECPs improve the effectiveness of FPR measures to prevent or minimize controllable sediment discharge from NTMPs, particularly along roads used for timber operations and at crossings of streams. Eighteen of the 23 NTMPs evaluated had recent NTOs (submitted between November 1, 2007 and July 17, 2011). The remaining five NTMPs did not have recent NTOs, but had some history of active logging. Seven of the NTMPs had an ECP included as part of the plan. During the field evaluations, observations were made along logging roads and at 141 watercourse crossings.
- Regional Water Board staff found that crossings at which recent harvest operations had taken place and those in NTMPs that had ECPs exhibited fewer features with the potential to discharge sediment.
20. Since 2004, Regional Water Board permitting requirements for most timber harvesting in the North Coast have resulted in systematic inventories of CSDSs

⁶Controllable sediment discharge sources are defined as sites or locations within the logging area that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this Waiver;
2. was caused or affected by human activity; and
3. may feasibly and reasonably respond to prevention and minimization management measures.

becoming accepted by RPFs and landowners as a routine part of harvest plan development and have contributed to long term protection and restoration of the beneficial uses of water in the North Coast Region. Ongoing collaborative efforts have resulted in improved implementation of FPR section 916.4/936.4 to accomplish ECP goals. In October 2012, CAL FIRE staff developed a guidance document for foresters clarifying that when submitting a NTO, the FPRs require that the *“certification should consider the entire NTMP acreage, including all features connected with the CEQA project, such as appurtenant roads, roads identified on the NTMP, water drafting sites, landings, etc.”* In addition, CAL FIRE staff is collaborating with Regional Water Board staff and RPFs to develop a table that can be included in NTMPs as enforceable provisions that would include all the information required in ECPs in a consistent format.

21. Based on the 2011-2012 field evaluations and participation in review and oversight of NTMPs, Regional Water Board staff concluded that ECPs can enhance the application and implementation of those FPRs designed to prevent and minimize sediment discharge and help to ensure compliance with sediment-related water quality requirements on NTMPs. However, preparation of a complete inventory of CSDSs for the entire plan area of existing NTMPs may result in significant additional cost for many NTMP landowners. Such costs may be prohibitive, particularly for landowners not actively conducting timber operations. Moreover, NTMP land not in operation is in the same condition as any other property in the region not subject to a waiver requiring ECPs. As the Regional Water Board makes progress on expanding regulation of nonpoint source pollution and TMDL implementation, it is anticipated that such ownerships will be required to demonstrate compliance with water quality requirements under one of the Regional Water Board programs. In recognition of the financial burden required to prepare, inventory and treat CSDSs, this Order establishes a tiered waiver structure that allows landowners with NTMPs approved before July 1, 2013 two options for Waiver coverage; those options consist of either a) identifying and treating all sites within an area covered by an NTO that have the potential to adversely impact the beneficial uses of water, including CSDSs, concurrent with operations under the NTO, or b) preparing an ECP for the entire NTMP area and treating sites according to an implementation schedule that may exceed the five year timeframe of the waiver. NTMPs approved after July 1, 2013 must include an ECP for the entire NTMP, and are only eligible for Tier B. These options for coverage entail enrolling in one of two tiers as described below:

Tier A

Landowners of NTMPs approved prior to July 1, 2013 who have not developed an inventory of CSDSs for their entire NTMP may seek coverage for an area covered by an NTO. To be eligible for Tier A, NTMP landowners must submit their RPF's certification that they have evaluated the harvest area to identify and list sites that have the potential to violate water quality requirements or adversely impact the beneficial uses of water and will implement measures to protect and restore the beneficial uses of water within the one year timeframe of the NTO. Waiver coverage will only apply to the NTO area and be valid for

the life of the NTO and maintenance period. Discharges of waste outside an NTO area shall be subject to Basin Plan and all enforcement authorities under the Water Code like any other unpermitted discharge of waste.

Tier B

Landowners that submit an ECP for their entire NTMP area can qualify for coverage under Tier B. Under Tier B, Waiver coverage will apply to the entire NTMP area and landowners will not be required to apply for coverage prior to submittal of subsequent NTOs.

22. Water quality requirements related to sediment discharge from NTMP lands can largely be implemented through full and proper implementation of the FPRs, with additional protection measures incorporated into NTMPs for site-specific conditions when recommended by the Regional Water Board.
23. In order to streamline the review process and increase efficiency for landowners, RPFs, and reviewing agencies, it is appropriate to rely in large part on the FPRs to implement Basin Plan water quality standards in the most efficient manner while retaining the Regional Water Board's statutory authority contained in the Porter Cologne Water Quality Control Act (Water Code sections 13000 et seq.) and the Basin Plan. While CAL FIRE is the lead agency responsible for enforcement of the FPRs, those provisions related to protection and restoration of the beneficial uses of water quality are included specifically, or by reference, as enforceable provisions of this Order. The Regional Water Board will continue to participate as a Review Team member to review NTMPs, including conducting field inspections prior to, and during all phases of harvesting.
24. The Regional Water Board will implement an independent inspection program of active NTMPs to evaluate the adequacy of measures designed to protect the beneficial uses of water on NTMPs as required by the conditions of this Waiver. Regional Water Board staff will continue to conduct outreach efforts to landowners, RPFs, and CAL FIRE inspectors to work to align implementation and enforcement of CAL FIRE's regulation of NTMPs with water quality requirements.
25. Landowners with NTMPs that have never had active timber operations are encouraged to consult with Regional Water Board staff in order to understand current requirements and update their plans if necessary prior to conducting timber operations. Regional Water Board staff will provide assistance, training, and guidance on the various methods available to achieve compliance with water quality requirements. When collaborative efforts to achieve compliance with water quality regulations are not successful, it is the practice of the Regional Water Board to take progressive enforcement action as necessary to address violations.
26. 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 are recognized as major contributing factors causing the impaired conditions, with timber harvesting conducted prior to implementation of regulations developed to

reduce environmental impacts of logging being one of the leading sources. Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern. TMDLs quantify the natural and anthropogenic sources causing impairment, assess the loading capacity of the watershed, and allocate the amount of a pollutant that can be discharged in a specific watershed without impairing beneficial uses of water.

In 2004, the Regional Water Board adopted a Sediment TMDL Implementation Policy (Resolution R1-2004-0087), which states that Regional Water Board staff 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 impaired by sediment.

In 2012, the Regional Water Board also adopted a Temperature Policy statement, which encourages a combination of TMDL requirements with region-wide nonpoint source programs for efficiency and to avoid duplicative regulation. Often, the same management measures can address nonpoint source water quality concerns regardless of whether or not the waterbody is impaired. Sediment conditions interact with water in many ways that can affect water temperatures. Therefore, practices implemented to prevent and minimize elevated sediment discharges may also help control elevated water temperatures.

27. This Order relies in large part on existing regulations in the FPRs for implementation of management measures for the control of temperature impacts and sediment discharges from NTMPs. These management measures include:
- Long term uneven age management;
 - The establishment of riparian protection zones;
 - Retention of riparian canopy;
 - Identification and treatment of existing sediment discharge sources; and
 - Measures designed to prevent new discharge sources.

When fully and properly implemented, these management measures can contribute to achieving TMDL load allocations for sediment and temperature from NTMPs.

28. State Water Board Resolution 68-16 ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") requires that whenever the existing quality of water is better than the quality established in policies as of the date on which such policies become effective, such existing high quality must be maintained. Any change in the existing high quality is allowed by that policy only if it has been demonstrated to the Regional Water Board that any change will be consistent with maximum benefit to the people of the state, and will not unreasonably affect present and anticipated beneficial uses of such water and will not result in water quality less than that prescribed in the policies. The policy further requires that dischargers meet waste discharge requirements which will

result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state will be maintained.

This Waiver is consistent with Resolution 68-16 because overall it will result in a net benefit to water quality by setting forth conditions that implement measures designed to prevent sediment discharge to the extent feasible. In addition, uneven aged sustained yield forestry practiced under NTMPs generally results in minimal reduction in riparian shade canopy levels immediately following harvest. Such forestry practices typically result in improvements to forest stand conditions that provide long term enhancement to riparian shade by increasing growth rates and growing larger trees. The activities permitted under this Order are considered to accommodate important economic and social development and have been determined to have a low potential impact to water quality when conducted pursuant to the terms of the Order, resulting in compliance with applicable water quality requirements. The implementation of all cost-effective and reasonable management measures to prevent or minimize sediment discharge, and the monitoring of their effectiveness to identify and correct sites where such management measures are not functioning as intended, will result in the best practicable treatment or control of the discharge and will assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state is maintained.

29. In accordance with the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (CEQA), the adoption of a waiver is a “project” and the Regional Water Board is the lead agency responsible for approving that project. Section 15061(b)(3) of the CEQA Guidelines (section 15000 et seq of title 14 of the California Code of Regulations) allows a lead agency to find a project exempt from CEQA if “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” The Regional Water Board conducted a CEQA analysis and adopted a mitigated negative declaration that accompanied Order R1-2009-0038 in 2009 (SCH 2009042053). This Order does not result in any physical changes in the environment different from what is described and analyzed in the mitigated negative declaration and is therefore exempt from CEQA under title 14, California Code of Regulations, section 15061, subdivision (b)(3). The Regional Water Board will file a notice of exemption in accordance with title 14, California Code of Regulations, section 15062 within five (5) days of the adoption of this Order.
30. The Regional Water Board has reviewed the contents of this Order, written public comments, and testimony provided after notice and hearing, and finds that the adoption of this Order is consistent with the Basin Plan, and is in the public interest.
31. This Order must be renewed within five years of its adoption. It is the intent of the Regional Water Board that, prior to this renewal, it shall evaluate the effectiveness of this Waiver in protecting the beneficial uses of water on NTMPs in the North

Coast Region and in providing regulatory efficiency to state agencies and the regulated community.

THEREFORE, IT IS HEREBY ORDERED that pursuant to Water Code sections 13263, subdivision (a), 13267, and 13269, the Regional Water Board waives the requirement to submit a report of waste discharge and the requirement to establish waste discharge requirements for discharges of waste from timber harvest activities on NTMPs, subject to the following:

SECTION A: SPECIFIC CONDITIONS

1. The NTMP landowner shall comply with all applicable requirements and prohibitions specified in the Basin Plan, and policies adopted by the State Water Board.
2. The NTMP landowner shall conduct timber harvest activities in compliance with the FPRs. In addition, FPRs and NTMP conditions (including, but not limited to, FPR sections 896, 898, 914 (934), 916 (936), 923 (943) and mitigation measures identified and required pursuant to CAL FIRE CEQA process) that are intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.
3. Tier A
For NTMPs approved before July 1, 2013, waste discharge requirements shall be waived under Tier A for NTO areas, including appurtenant roads, for the life of the NTO and the erosion control maintenance period by complying with the requirements listed below:
 - a. The RPF shall conduct a field evaluation of current conditions in the NTO area to identify sites that have the potential to violate applicable water quality requirements or adversely impact beneficial uses, are human caused, and can reasonably and feasibly be treated.
 - b. The RPF shall propose measures to protect and restore the beneficial uses of water to the extent feasible at sites identified in A(3)(a) and the landowner shall implement such measures during the life of the NTO.
 - c. The landowner shall submit to the Regional Water Board a list containing each site identified in the NTO pursuant to Section A(3)(a) and a brief description of corrective action as proposed in Section A(3)(b). The location of each site must be shown on NTO maps.
 - d. The landowner shall submit to the Regional Water Board a "Certification Notice" (Attachment A) and a copy of the NTO at least 10 days prior to commencement of operations under the NTO. The certification notice must be signed by the landowner or designated representative, provide the information as required by the form, and acknowledge that the NTMP landowner understands and intends to comply with all water quality requirements of the Order.

- e. Upon submittal of the Certification Notice and a copy of the NTO, WDRs for the NTO and appurtenant roads used for the NTO shall be waived under Tier A. Waiver coverage for an NTO and appurtenant roads under Tier A will be in effect for the life of the NTO and the erosion control maintenance period.
- f. The landowner shall conduct an inspection of the NTO area including appurtenant roads prior to completion of the NTO and submit an inspection report to the Regional Water Board. The purpose of the inspection shall be to ensure that measures designed to prevent sediment discharge have been implemented and are functioning properly. At a minimum, the inspection report shall include the following:
 - i. Name of person conducting the inspection;
 - ii. Date of the inspection;
 - iii. A brief description of conditions observed during the inspection.

Attendance by Regional Water Board staff on the completion inspection may serve in-lieu of the inspection report.

- g. The NTMP landowner must submit a new Certification Notice for each subsequent NTO unless the NTMP becomes eligible for coverage under Tier B. NTMP landowners are encouraged to consult with Regional Water Board staff regarding developing or expanding an existing ECP to qualify for coverage under Tier B.
- h. Discharges of waste outside an NTO area shall be subject to the Basin Plan and all enforcement authorities under the Water Code, like any discharge of waste in the Region not covered under a waiver or other permit.

4. Tier B

Waste discharge requirements shall be waived under Tier B for NTMPs that comply with the conditions listed below. NTMPs approved after July 1, 2013 must include an ECP for their entire NTMP, and are only eligible for Tier B.

- a. The landowner shall submit a Certification Notice and an ECP prepared by a Qualified Professional⁷ based on a survey of the NTMP area. The ECP shall be based on a field evaluation of the NTMP area and shall include the following information:
 - i. Inventory and corrective actions for CSDSs
The inventory must include a description of current conditions as well as corrective actions that can reasonably be expected to prevent sediment discharge for each site. Each site description must include an estimate of the potential volume of sediment that could discharge to waters of the

⁷ "Qualified professional" means a person with the appropriate training and/or licensing to prepare an Erosion Control Plan or other technical reports designed to prevent the discharge of waste into waters of the state and conduct site inspections, including but not limited to, Certified Erosion Control Specialists, Registered Professional Foresters, Professional Geologists, Certified Engineering Geologists, and Professional Engineers.

state in the event of complete failure of the site. The description of corrective action shall provide sufficient design and construction specifications, including diagrams, minimum rock size, or performance standards as needed, to allow on site personnel to implement corrective measures as intended. Each CSDS must be shown on a topographic map of the logging area, at a scale of 1:12000 or greater.

ii. Implementation schedule

A time schedule for implementation of corrective actions based on the potential impacts to the beneficial uses of water. The priority must be based on the potential volume of sediment discharge, the imminence of failure, and the sensitivity of beneficial uses of water in receiving streams. It is anticipated that corrective actions will be implemented concurrent with the first NTO in the area. However, the implementation schedule provides landowners with flexibility to defer treatment of sites when appropriate. Landowners are expected to make reasonable progress implementing prevention and minimization management measures across their NTMP. The implementation schedule may exceed the five year lifespan of the Waiver when warranted.

iii. Inspection and reporting plan

The NTMP landowner, RPF or supervised designee shall inspect all accessible portions of the road system and harvest area of the entire NTMP during the period of an NTO and throughout the erosion control maintenance period for the NTO according to the following schedule:

- Prior to October 15 of each year to ensure that measures designed prevent sediment discharge measures are implemented, and;
- After April 1 and before June 15 to evaluate whether management measures have functioned adequately over the winter period and to determine whether any new controllable sediment discharge sources have developed.

The Inspection Plan shall identify the name(s) and contact number(s) of the assigned inspection personnel. If any new CSDSs are identified during inspections, corrective action must be implemented as soon as is feasible, but prior to the October 15 of the following winter period, unless another timeframe is approved by Regional Water Board staff. New controllable sediment discharge sources shall be evaluated and addressed in accordance with the provisions described above, and included in a revised ECP. The revised ECP must be submitted to the Regional Water Board no later than June 30 of the year.

The NTMP landowner shall record the information listed below for each inspection, and shall provide the information to the Regional Water Board upon request:

- the date of each inspection,
 - the inspector's name,
 - the location of each inspection,
 - the title and name of the person submitting the summary report,
 - a brief narrative description of observed conditions,
 - a description of any new CSDSs identified during inspections,
 - a description of any corrective action taken as a result of observations made during the inspections, as well as the date the corrective action was taken,
 - a description of where management measures have been ineffective and when the NTMP landowner will implement repairs or design changes to correct management measure failures.
- b. The NTMP will be eligible for coverage under Tier B upon approval by the Regional Water Board Executive Officer of an ECP for the entire NTMP.
- c. An NTMP landowner may apply for coverage under Tier B at any time by submitting an ECP for the entire NTMP and a Certification Notice (Attachment A). Regional Water Board staff shall evaluate the ECP for completeness and shall respond in writing within 30 days to notify the NTMP landowner whether coverage has been granted.
- d. NTMP landowners that have received written acknowledgement by the Regional Water Board that their NTMP has been waived under Tier B are not required to submit a Certification Notice for subsequent NTOs provided they maintain coverage under Tier B. The landowner shall submit a copy of each NTO to the Regional Water Board prior to commencement of timber operations under the NTO.
- e. Information provided to the Regional Water Board that is equivalent to that listed above may meet the ECP requirement for Tier B when the landowner demonstrates to the satisfaction of Regional Water Board staff that the information is adequate to prevent and minimize controllable sediment discharge from the NTMP.

SECTION B: PROHIBITIONS

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.
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.

3. The NTMP landowner must not cause or threaten to cause pollution, contamination, or nuisance, as defined by Water Code section 13050.
4. This Order does not waive WDRs for other regulatory programs, such as grading and land clearing for any type of construction of 1-acre or more. Such construction requires that the discharger obtain a construction stormwater permit and possibly a federal dredge and fill permit with accompanying 401 water quality certification if discharge occurs in waters of the United States.
5. The Discharger shall not adversely impact human health or the environment, or the beneficial uses of water set out in the Basin Plan.

SECTION C: GENERAL CONDITIONS

1. The NTMP landowner shall allow Regional Water 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.
2. Site specific recommendations proposed by Regional Water Board staff during the CAL FIRE review and approval process to comply with water quality requirements shall be incorporated into the approved NTMP to be eligible for waiver coverage. Disputes shall be raised through Regional Water Board staff management up to the Regional Water Board Executive Officer if necessary, for resolution. The Executive Officer's decision may be appealed to the Regional Water Board.
3. It is the responsibility of the NTMP landowner to ensure that all required documents have been received by the Regional Water Board and are complete and accurate.
4. The NTMP landowner shall notify the Regional Water Board in writing at least 45 days prior to any proposed aerial application of pesticides and 30 days for any proposed ground-based application of pesticides. The notification shall include the type of pesticide(s), method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality requirements.
5. Should it be determined by the NTMP landowner or the Regional Water Board that a discharge of waste is causing or contributing to a violation or an exceedence of an applicable water quality requirement or a violation of a prohibition, the NTMP landowner shall implement corrective action as feasible immediately following discovery that applicable water quality requirements were exceeded or a prohibition violated, followed by notification to the Regional Water Board by telephone or email as soon as possible, but no later than 48 hours after the discharge has been discovered. This notification shall be followed by a report within 14 days to the Regional Water Board, unless otherwise directed by the Executive Officer, that includes:

- i. The date the violation was discovered;
 - ii. the name and title of the person(s) discovering the discharge;
 - iii. a map showing the location of the discharge site;
 - iv. a description of recent weather conditions prior to discovering the discharge;
 - v. the nature and cause of the discharge;
 - vi. photos of the site documenting the discharge;
 - vii. a description of the a corrective action(s) currently being implemented to address the discharge;
 - viii. any additional corrective action(s) which will be implemented to prevent or reduce discharges that are causing or contributing to the violation or exceedence of applicable water quality requirements;
 - ix. an implementation schedule for additional corrective actions; and,
 - x. the signature and title of the person preparing the report.
6. The Executive Officer shall terminate the applicability of the Waiver to an NTMP or NTO if the Executive Officer makes any of the following determinations:
 - a. The NTMP or NTO does not comply with the eligibility criteria for the Waiver;
 - b. the NTMP or NTO is not in compliance with the applicable conditions of the Waiver;
 - c. the NTMP or NTO is reasonably likely to result or has resulted in a violation or exceedence of any water quality requirements; or
 - d. the NTMP or NTO has varied in whole or in any part from the approved Project in any way that could adversely affect water quality.
7. No discharge of waste into the waters of the state, whether or not the discharge is made pursuant to waste discharge requirements, shall create a vested right to continue to discharge. All discharges of waste into waters of the state are privileges, not rights (Water Code, section 13262, subd. (g)).
8. All activities covered by this Order must comply with local, state, and federal law.
9. Order R1-2013-0005 shall expire five years from the adoption date.
10. As provided by Water Code section 13350(a), any person may be liable for civil penalties if that person is in violation of a waiver condition or prohibition, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged into the waters of the state and creates a condition of pollution or nuisance.

11. This Order supersedes and replaces the NTMP provisions in Order No. R1-2009-0038, including Section I(E), Section III, and application procedures contained in Section II as applicable to NTMPs. This Order terminates the force and effect of the Limited Term Amendment of NTMP Provisions of Order No. R1-2009-0038 (Order No R1-2011-38) and subsequent extensions. Staff shall make the necessary amendments to Order No. R1-2009-0038 in accordance with this provision.

DRAFT

APPENDIX A WAIVER CERTIFICATION FORM

SECTION I. NTMP LANDOWNER INFORMATION

NTMP Number: _____

Timberland Owner(s): ¹ _____ Address: _____ Phone: _____

SECTION II. NTMP INFORMATION

A. NTMP Location: Primary watershed: _____ Calwater Planning watershed: _____ Total Acreage: _____ Year Approved: _____ Silviculture method(s): _____
B. RPF Name: _____ Phone No. _____ Address: _____

SECTION III. IMPLEMENTATION OF WAIVER CONDITIONS

A. Waiver Tier (<i>check applicable box</i>): <input type="checkbox"/> TIER A - RPF has conducted a field evaluation of current conditions in the NTMP area to identify sites that have the potential to adversely impact the beneficial uses of water and identified measures to protect and restore the beneficial uses of water in the NTO area to the extent feasible, which shall be implemented during the life of the NTO, pursuant to Section A(3)(a-b) of this Order; <input type="checkbox"/> TIER B - A field evaluation of the NTMP has been conducted and an Erosion Control Plan covering the entire NTMP has been prepared pursuant to Section A(4)(a) of this Order.
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SECTION VI. CERTIFICATION

<p>"I certify under penalty of perjury that this document and all attachments were prepared under my direction and the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. In addition, I certify that the provisions of the Waiver will be complied with."</p> <p>Printed Name: _____</p> <p>Signature: _____</p> <p>Title: _____ Date: _____</p>

¹ Use the space provided on the following page as needed for additional timberland owners.

