

Executive Officer's Summary Report
9:00 a.m., June 7, 2012
Willow Creek Community Services District
Kimtu Cookhouse/Lodge
135 Willow Road
Willow Creek, California

ITEM: 11

SUBJECT: Update on Potential Revisions to Categorical Waiver of Waste Discharge Requirements for Non-Industrial Timber Management Plans In the North Coast Region (Order No. R1-2009-0038)

DISCUSSION

The purpose of this workshop is to inform and seek input from the Regional Water Board and the public about progress made in developing potential revisions to the conditions in the Categorical Waiver of Waste Discharge Requirements for Non-Industrial Timber Management Plans (NTMPs). A notice for the workshop was distributed via email on May 1, 2012. No action will be taken by the Regional Water Board at the workshop.

Background

The Regional Water Board adopted the Categorical Waiver of Waste Discharge Requirements For Discharges Related to Timber Harvest Activities On Non-Federal Lands in the North Coast Region (Order No.R1-2009-0038) (Categorical Waiver) in June 2009. At that time, additional conditions were added specifically for NTMPs for preserving or restoring shade canopy in riparian areas, and extending the requirement for the development of Erosion Control Plans and Road Management Plans to older NTMPs that had previously been grandfathered by the 2004 Categorical Waiver (R1-2004-0016).

Landowners, Registered Professional Foresters (RPF), and the Department of Forestry and Fire Protection (CAL FIRE) immediately raised concerns that new conditions on NTMPs would impose unreasonable burdens on NTMP landowners and CAL FIRE. In response to these concerns, in March 2011, the Regional Water Board adopted a limited term amendment temporarily re-instating conditions from the 2004 Waiver that applied to NTMPs.

The extension provided time for Regional Water Board staff to evaluate the protections included in NTMPs and to develop a revised set of conditions for a Waiver for NTMPs

for the Regional Water Board to consider. Since March 2011, Regional Water Board staff has undertaken a variety of investigations and conducted outreach to interested parties to improve mutual understanding as well as to identify solutions to controlling discharges from NTMPs to achieve compliance with Total Maximum Daily Loads, Basin Plan standards, and rules for protecting water quality included in the Forest Practice Rules.

Collaborative Investigations and Outreach

The purpose of this workshop is to discuss the results of Regional Water Board staff's efforts to date and to provide a forum for members of the public to comment on potential revisions to the Categorical Waiver. The following is a brief summary of the collaboration and outreach efforts:

Collaboration with CAL FIRE

- CAL FIRE and Regional Water Board conducted three formal meetings between August 2011 and April 2012, as well as a series of informal meetings, telephone conversations and other communications to discuss perspectives, regulatory gaps and areas of agreement on NTMP oversight.
- During the summer and fall 2011, CAL FIRE and Regional Water Board staff launched joint NTMP inspections and conducted a joint monitoring study, inspecting 23 NTMPs;
- Conducted a joint gap analysis of applicable Forest Practice Rules that address water quality protection measures for NTMPs. In particular, this joint analysis evaluated potential gaps in water quality protection for NTMPs that pre-date 2000 when the rules were augmented to provide additional protection for anadromous salmonids.

Outreach to Landowners, Foresters, and Interested Parties

- Created a subscription email list to keep interested parties informed on progress;
- Since April 2011 Regional Water Board staff have had numerous ongoing discussions about NTMPs, Forest Practice Rules, and this Waiver review project with a wide range of RPFs, landowners, environmentalists, and agency personnel;
- April – September 2011: Regional Water Board members and staff conducted three NTMP field tours with NTMP landowners, RPFs, and representatives of the Mendocino County Farm Bureau, the Buckeye Conservancy of Humboldt County, and members of the California Licensed Foresters Association;

- September 2011: Regional Water Board staff sent approximately 1,500 letters to all NTMP landowners and RPFs of record informing them of the status of the Waiver, the potential for revisions, and provided them an opportunity to participate and comment on staff's review process;
- Formed focus groups in both the northern and southern portions of the North Coast Region comprised of CAL FIRE staff, NTMP landowners, RPFs and environmental and industry associations representing a wide range of perspectives on timber harvesting issues. The purpose of convening the focus groups was to facilitate informal discussions and provide opportunities to receive direct feedback to guide staff during development of a revised waiver. The northern and southern focus groups have each met two times in March and May 2012 in Santa Rosa and Eureka, respectively.

Potential Tiered Waiver Structure

In response to those ongoing discussions with landowners, foresters, CAL FIRE, focus group participants, and other interested parties, Regional Water Board staff are in the process of preparing a draft proposal to modify the 2009 Waiver conditions specific to NTMPs. In concept, the draft proposal would create two tiers based on the extent to which NTMP landowners incorporate sediment control plans into new or existing NTMPs to meet Basin Plan standards, including sediment and temperature TMDL load allocations.

These NTMPs that are implementing adequate Erosion Control Plans (ECPs) and Road Management Plans (RMPs) for the entire NTMP area would be covered under Tier A of the waiver with no enrollment requirement. Those NTMPs that do not have property-wide ECPs and RMPs would fall under Tier B and must demonstrate compliance with water quality standards via RPF certification of compliance with applicable Forest Practice Rules. Treatment of sediment sources within the NTO area during the life of the NTO would be a condition of compliance under Tier B.

This tiered waiver approach explicitly recognizes that full and proper implementation of applicable Forest Practice Rules can meet water quality requirements. The goal of the tiered approach is to provide a regulatory permitting mechanism for NTMPs such that landowners whose foresters have certified implementation of Forest Practice Rules may continue to operate these approved plans while ensuring that these plans do not impact beneficial uses through implementation of:

- Measures to prevent or minimize sediment discharge from the plan area, and;
- Measures to prevent reducing forest canopy below levels necessary to provide adequate shade on watercourses to comply with Basin Plan Temperature Objective.

Regional Water Board staff propose that streamlining the enrollment process and increased reliance on the Forest Practice Rules is expedient and does not impact the Regional Water Board's authority. Waiver coverage would continue to be conditional upon those plans complying with all Basin Plan water quality requirements. Regional Water Board would retain the ability to inspect NTMPs upon reasonable notification and initiate enforcement action when necessary.

Workshop Outline

At the workshop Regional Water Board staff will provide an overview of the current status of the outreach and collaborative efforts, report on the progress toward releasing revisions to the conditional waiver, and provide a timeline for public review of the draft Categorical Waivers prior to consideration by the Regional Water Board. In addition, Regional Water Board and CAL FIRE staff will present the results of the joint monitoring study. This workshop provides an opportunity for interested parties to comment on potential revisions to the Waiver. No action will be taken at the workshop.

PRELIMINARY STAFF
RECOMMENDATION:

This is a workshop item only.