

Response to Comments

Draft Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land Management Activities On National Forest System Lands in the North Coast Region

Order No. R1-2015-0021

Background

Regional Water Board staff prepared draft Order No. R1-2015-0021, *Waiver of Waste Discharge Requirements For Nonpoint Source Discharges Related to Certain Federal Land Management Activities on National Forest System Lands in the North Coast Region* (draft 2015 USFS Waiver) to supersede Order No. R1-2010-0029 (2010 USFS Waiver). The draft 2015 USFS Waiver and associated draft Monitoring and Reporting Program (draft 2015 USFS MRP) were noticed and made available for public review and comment on July 31, 2015 for 30 days. A Regional Water Board Workshop was held in Santa Rosa, California on August 12, 2015. The public comment period ended at 5:00 pm on August 31, 2015. We received eight (8) comment letters from the following entities:

- A. United States Forest Service (USFS), Region 5
- B. Karuk Tribe
- C. Quartz Valley Indian Reservation
- D. North Group Redwood Chapter of the Sierra Club and the Project to Reform Public Land Grazing in Northern California (Sierra Club/Project)
- E. Klamath Forest Alliance and Environmental Protection Information Center (KFA/EPIC)
- F. Central Sierra Environmental Resource Center (CSERC)
- G. California Farm Bureau Federation, California Forestry Association, California Cattlemen's Association
- H. Mendocino County Farm Bureau

We received many comments in support for many aspects of the draft 2015 USFS Waiver and MRP, and other comments expressing general concerns (including USFS funding), and issues with specific Waiver provisions. This document presents those comments and our responses, including reference to changes made to the proposed 2015 USFS Waiver and MRP as a result of comments received.

A. United States Forest Service

1. **Summary of Comments:** The USFS appreciates the work done by USFS and Regional Water Board (RWB) staff in support of the USFS Waiver and MRP, specifically for treatment of legacy sediment sites in TMDL watersheds:

***Staff Response:** Comment noted. RWB staff appreciates the consultations and meetings with USFS staff, and the input they provided during the development of the draft 2015 USFS Waiver and MRP. RWB staff has worked to address the concerns raised by the USFS regarding the draft 2015 USFS Waiver and MRP through revisions referenced throughout this response to comments document.*

2. **Summary of Comments:** Some provisions of the draft 2015 USFS Waiver and MRP will restrict the ability of the USFS to implement its management objectives and ability to protect and enhance watershed conditions and water quality, including work to reduce the risk of large fires.

***Staff Response:** One of the principle goals of the USFS Waiver and MRP is to provide Clean Water Act compliance in 303(d) listed watersheds. The proposed modifications to the 2015 USFS Waiver build upon existing USFS programs to better accomplish this goal. The Porter-Cologne Water Quality Control Act (Porter-Cologne) provides broad authority for the state, through the State and Regional Water Boards, to regulate activities with nonpoint source discharges and other controllable factors which may affect the quality of waters of the state. Through Porter-Cologne, the State and Regional Water Boards develop regulation, policies, plans (including Basin Plans), set water quality standards, issue permits and waivers, adopt Total Maximum Daily Loads (TMDLs), and take enforcement actions, all designed to achieve the highest quality water that is reasonable, considering other factors. The State and Regional Water Boards also implement portions of the federal Clean Water Act that have been delegated to the state. This Waiver has been crafted to meet those regulations, policies, plans, water quality standards, and adopted TMDLs. In the broadest sense, this Waiver is implementing the requirements of Porter-Cologne, the appropriate portions of the federal Clean Water Act, and those regulations, policies, and plans that have arisen as a result of those laws.*

The USFS's planning framework provides a unique opportunity for comprehensive permit coverage that provides better and more efficient protection of the beneficial uses of water by addressing temperature and sediment sources systematically across the landscape. In order to effectuate this goal, the Waiver conditions are necessarily broad because the entire approach is to rely on the USFS' large land ownership and programs. To use landscape-level water quality protection, Waiver conditions must track the USFS Guidance, and are appropriate and necessary to comply with Porter-Cologne. It is not the intent of the 2015 USFS Waiver to limit the ability of the USFS to effectively implement ecosystem restoration objectives, including critical work needed to reduce the risk of large-scale high-intensity fire.

The 2010 USFS Waiver provides a waiver for discharges from NFS land that result from emergency actions, as defined in California Code of Regulations, title 14, section 15269. This covers "[p]rojects to maintain, repair, restore, demolish, or replace property of

facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act [commencing with Government Code section 8550].” This also covers emergency repairs necessary to maintain service essential to public health, safety or welfare, and specific actions necessary to prevent or mitigate an emergency. Long-term projects are not covered; however, this provision can be relied upon in some instances for critical fire prevention work. The emergency exemption is carried over to the 2015 USFS Waiver, with additional discussion and provisions for its use as it relates to fire cleanup work. (See Order section C.7.)

3. **Comment:** “The scope and scale of the proposed monitoring requirements will exceed the capacity of US Forest Service staff.”

Staff Response: *The vast majority of the draft 2015 USFS Waiver and MRP relies on existing USFS programs. The 2015 USFS Waiver does contain some additional monitoring beyond the 2010 USFS Waiver. There may be some increased startup costs for some of the new monitoring the USFS is required to do under the draft 2015 USFS MRP. The new monitoring requirements are necessary to demonstrate on-the-ground prescriptions are effective at meeting the goals of specific BMPs and to provide a feedback loop to measure the effectiveness of various management practices. Additional monitoring of in-stream conditions is needed to determine the extent to which beneficial uses are supported and to assist in prioritizing remediation and watershed restoration activities.*

4. **Comment:** “Requirements to treat legacy sediment sites as part of project proposals will reduce the Agency's ability to implement critical fuels reduction work and high priority watershed restoration work. Forest Service budgets are allocated by Congress, and the level of funding we receive to implement fuels reduction activities far exceeds that allocated to conduct restoration work on roads and stream channels.”

Staff Response: *Requirements for legacy sediment site treatment at the project-scale for Category B projects were included in the 2010 USFS Waiver and have been carried forward into the draft 2015 USFS Waiver. The draft 2015 USFS Waiver provides flexibility by adding the option for the USFS to submit alternative legacy sediment site treatment plans to address legacy sediment site treatment at a feasible scale for Category B projects that cover large areas.*

5. **Comment:** “The proposed waiver requirements are inconsistent with the Agency's current emphasis on completing restoration work within priority watersheds, as defined under the Watershed Condition Framework. I would like the opportunity to discuss the Agency's goals for improving overall watershed condition, to determine if we can bring the waiver requirements for legacy sediment site treatments into better alignment with the Watershed Condition Framework process, and the realities of our funding constraints.”

Staff Response: *The 2010 USFS Waiver required remediation of legacy sediment sites within a Category B project area unless the project area is part of a larger watershed restoration planning effort (2010 USFS Waiver, Waiver Application for Category B Activities, No. 5). The draft 2015 USFS Waiver contains language (Projects Category A*

and B, Category B Conditions, No. 1) that allows for legacy sediment site treatment to occur under an active Watershed Restoration Action Plan (WRAP) rather than being required to treat all legacy sediment sites within a Category B project area. WRAPs are a component of the larger USFS Watershed Condition Framework (WCF). This alternate approach to legacy sediment site treatment is an example of the effort taken to incorporate the WCF into the draft 2015 USFS Waiver. The WCF provides a systematic, prioritized, approach to restoration and the RWB supports this approach. We look forward to working with the USFS on addressing the challenges of restoring National Forest System (NFS) lands.

6. **Comment:** “The requirement to do retrospective BMP monitoring evaluations on areas which were rated as effective and completed in the previous five years is, in our opinion, isn't the best use of resources.”

Staff Response: *We concur. This requirement has been removed from the proposed 2015 USFS MRP.*

7. **Summary of Comments:** The road projects effectiveness monitoring component of the draft 2015 USFS MRP is overly burdensome and duplicative of the USFS random selection BMP effectiveness monitoring and storm patrol monitoring. The USFS proposes additional storm patrol monitoring of recently constructed roads and existing roads that have had recent road work installed.

Staff Response: *Road projects effectiveness monitoring is an important aspect of the draft 2015 USFS MRP. We have chosen a method that follows the existing checklist approach, which allows for trained staff other than USFS hydrology staff to conduct the monitoring. The purpose of road project effectiveness monitoring is to better understand how on-the-ground prescriptions and BMPs relating to roads are performing, to provide a positive feedback loop to inform USFS road maintenance staff of potential problems, and to ensure those problems are addressed in a timely fashion. Storm Patrol Monitoring is an important component of the draft 2015 USFS MRP but is only conducted after large storms that typically occur several years apart. RWB staff believe that recently constructed and reconstructed roads are a priority, deserve additional attention, and should be assessed in accordance with the road projects effectiveness monitoring as written in the draft 2015 USFS MRP (section IV.B., Road Projects Effectiveness Monitoring). To help balance any workload associated with this priority, the Retrospective BMP monitoring has been eliminated from the draft 2015 USFS Wavier.*

8. **Summary of Comments:** Concerns regarding how short term and long term monitoring metrics, specific to grazing allotment monitoring, are presented in the draft 2015 USFS MRP. USFS staff have prepared a proposal for revising the language in draft USFS 2015 MRP section V, Grazing Allotment Monitoring, to reflect changes related to short and long term monitoring metrics.

Staff Response: *Comment noted. We have modified the grazing allotment monitoring portion, section V. of the draft 2015 USFS MRP in order to address issues relating to identification of short and long-term monitoring metrics. We incorporated the general form of what the USFS proposed as an attachment to its comment letter on the draft 2015*

USFS Waiver and MRP. Please see the proposed 2015 USFS MRP to review the RWB staff modifications in light of your comments.

9. **Comment:** “Use of the term 'inspection' to describe scientifically rigorous quantitative monitoring implemented for evaluating long-term trends in ecological condition is misleading.”

Staff Response: *Comment noted. We have modified Section V to reflect this comment in the proposed 2015 USFS MRP.*

10. **Comment:** “Pathogen monitoring is a costly and challenging monitoring metric. We believe the total number of samples collected should be determined based on initial results of data collection so that sites that are clearly not indicating a potential problem are discontinued for that season. The need for additional sampling would then be determined based on the initial results.”

Staff Response: *RWB staff looks forward to working collaboratively with USFS staff from each National Forest on developing annual allotment monitoring plans, including specific details related to pathogen indicator bacteria monitoring. The allowance for alternative monitoring to that specified in the MRP, subject to Executive Officer approval, is retained in the proposed 2015 USFS MRP.*

B and C. Karuk Tribe and Quartz Valley Indian Reservation

The Karuk Tribe and Quartz Valley Indian Reservation provided identical comments on the draft 2015 USFS Waiver and MRP and are combined in this response to comments document on Pacific Watershed Associates' letterhead.

- 11. Summary of Comments:** The draft 2015 USFS Waiver and MRP are significantly improved over the existing Waiver and MRP, but language in both the draft USFS Waiver and MRP are in need of additional strengthening.

Staff Response: *Thank you for your comment. RWB staff has revised the proposed 2015 USFS Waiver and MRP in response to stakeholder concerns. Please review the response to comments below and the proposed 2015 USFS Waiver and MRP for additional clarifications.*

- 12. Summary of Comments:** The draft 2015 Waiver does not contain a “report card” or detailed statement of findings regarding the effectiveness of, and USFS compliance with, the requirements of the 2010 USFS Waiver and MRP.

Staff Response: *The draft 2015 USFS Waiver and MRP contain primarily the same requirements as the existing 2010 Waiver and MRP, with a few updates and improvements. The 2010 Waiver was the first permit to comprehensively regulate nonpoint source pollution on USFS lands in the North Coast Region. The 2010 Waiver functioned well in providing a framework for permitting nonpoint source activities and protecting water quality on USFS lands over the past five years; however, lessons learned (by both RWB and USFS staff) from the first five years of Waiver implementation and comments from stakeholders help inform refinements in this iteration of the permit. Improvements in this Waiver include: citing new USFS programs that address restoration and water quality protection; new National Best Management Practices (BMPs) and monitoring protocols; alternatives for addressing the treatment of legacy sediment sites in certain Category B projects; establishment of forest-wide in channel monitoring networks; additional monitoring of livestock grazing, road project effectiveness and post-fire monitoring; and requirements for tracking and reporting treatment of sediment discharge sites. RWB staff maintains digital and paper files for USFS projects enrolled under the Waiver as well as annual monitoring reports, and these documents are available upon request.*

In reviewing the effectiveness of the 2010 USFS Waiver as a part of developing the draft 2015 USFS Waiver, it became apparent that the 2010 USFS Waiver did not contain sufficient annual reporting to track USFS Waiver compliance. The draft 2015 USFS MRP was modified to require each National Forest to track projects and activities designed to abate existing and threatened sediment discharges in order to track progress in remediating existing sediment inputs on NFS lands. Specific information now required to be tracked and provided in annual summaries includes: the project name and location, including the field watershed name; the type of project; an estimate of volume of sediment remediated in cubic yards; and other relevant information to characterize and quantify the remediation of existing and threatened sediment discharges. The proposed 2015 USFS MRP also requires each National Forest to submit a summary of road

maintenance activities, to report annual in-channel monitoring results, and to report implementation and effectiveness of on-the-ground prescriptions and BMPs. The additional reporting requirement, and RWB staff inspections on a subset of projects to verify implementation of on-the-ground prescriptions, should provide the necessary information to better facilitate the preparation of findings regarding the effectiveness of, and USFS compliance with, the requirements of the 2015 USFS Waiver and MRP.

- 13. Summary of Comments:** The USFS has insufficient funding and personnel for legacy sediment site treatment on large projects in a timeframe that does not extend for decades. The WCF provides prioritization of restoration activities and legacy sediment site treatment in priority watersheds but does not provide the requisite funding. The draft 2015 USFS Waiver should require the USFS to annually have a discussion of potential funding sources and include an annual budget analysis for funding of restoration and legacy site treatment activities to be submitted for RWB staff and public review.

Staff Response: *The RWB does not have the authority to impose requirements with respect to USFS funding. The inventory, prioritization, and remediation of sites is an on-going process linked to restoration planning and development of individual projects. The conditions in the draft 2015 USFS Waiver for the USFS to develop inventories and implement treatments, report on restoration planning, meet with RWB staff, and address legacy sediment sites on individual project areas in watersheds without an active WRAP are all part of the process to address sites on a priority basis and reflect the reality of changing funding for USFS projects.*

As each National Forest is involved in a competitive process to secure federal restoration funds, a 5 year budget, as requested in the comments, would not reflect the actual funding levels that a particular National Forest would be able to secure over that timeframe. A long-term budget may be possible in the future, but we do not see this proposal as feasible at this time. Cleanup of legacy sediment sites is a required element for TMDL compliance. Annual meetings and reports inform the Regional Water Board whether reasonable progress is being made, and provides an opportunity for staff to discuss priorities for water quality.

- 14. Comment:** “Hydrologically connected roads, ditches, cutslopes and other bare soil areas are very important, correctible sediment sources and should be specifically discussed in the Draft Waiver. They should be identified, mapped, inventoried, and targeted for prioritized treatment in the 2015 Waiver.”

Staff Response: *Thank you for your comment. The Category B project enrollment process allows RWB staff to assess if a proposed project includes the necessary BMPs and on-the-ground prescriptions in order to provide coverage under the Waiver. The USFS Region 5 Water Quality Management Handbook¹ identifies the need to minimize the amount of hydrologically-connected road segments present on NFS lands. Road inventories reviewed by RWB staff and conducted by the USFS contain assessments of hydrologic connectivity. Assessment and treatment of hydrologically-connected road*

¹ http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5399662.pdf

segments are required to be conducted as part of a USFS project enrolled under the USFS Waiver.

15. **Summary of Comments:** The draft 2015 USFS Waiver should include a long-term restoration and legacy sediment site treatment strategy with measurable mileposts and timelines with a defined end date. The objectives and targets of the draft USFS 2015 Waiver will not be obtainable unless USFS funding for restoration activities is greatly increased.

Staff Response: *The draft 2015 USFS Waiver has been developed to further the goal of remediation of sediment and temperature impairments in 303(d) listed watersheds in the North Coast Region. While each National Forest is required to comply with both the larger USFS restoration strategies (ACS, WCF, and others) as well as Waiver requirements, each National Forest has its own approach to tackling the challenge of restoring water quality. We work collaboratively with each National Forest in the North Coast Region to assess and develop long-term restoration and monitoring plans. See response to comment 13 for a response regarding funding concerns.*

16. **Comment:** “We believe the “restoration” strategy employed in the Waiver program should really be envisioned and implemented as a “protection and restoration” strategy, rather than just a restoration program. The first, highest priority mandate under the Waiver should be to preserve and protect the best, most productive watersheds with the best water quality and aquatic habitat, thereby preventing their deterioration during future storms and floods. The strategy has been concisely described as “save the best, restore the rest” and this has been recognized as perhaps the most ecologically sound restoration strategy.” “Highly impacted watersheds represent a money-pit strategy that requires significant expenditures with minimal near term benefit.”

“We understand that TMDL watersheds do not follow that strategy, as these watersheds have already been identified as being impaired and in need of protection and restoration, and there is a legal mandate for their eventual treatment. But much of the rest of the managed Forest landscape within the Waiver program could easily be focused towards protecting the remaining high quality, ecologically important areas before they deteriorate. Only then would the more degraded and costly areas be proposed for significant restoration.”

Staff Response: *Comment noted. The draft 2015 USFS Waiver is envisioned as a protection and restoration strategy. Waiver Finding 49 states, “State Water Board Resolution No. 68-16 (“Statement of Policy with Respect to Maintaining High Quality of 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.”*

This Waiver is consistent with Resolution No. 68-16 because overall it will result in a net benefit to water quality by setting forth conditions that implement riparian and shade protections and enhancements, address legacy sediment sites, and implement BMPs and on-the-ground prescriptions for new activities. Specific Category B projects are reviewed in light of the quality of the receiving water body.

17. Comment: "The draft Waiver lists eight land use activities that are subject to the Waiver. Within several of these are important terms that are not defined within the Draft Waiver or the Draft Monitoring and Reporting Program..." "These Category B activities include: 1) Road decommissioning, 2) Road upgrading, and 3) Road storm proofing."

"We recommend specific definitions and construction standards be listed for each of these activities..." "We do not believe current or national BMPs are sufficiently detailed to assure they will meet the required Waiver standards..." "The definitions should be matched with minimum technical criteria for construction that will be required for these practices to adequately satisfy best management standards for implementation under the Waiver."

Staff Response: *Thank you for your comment; we have added definitions for the three terms referenced above to the proposed 2015 USFS Waiver in response to your concerns.*

The Implementation Monitoring requirement of the 2015 USFS MRP (section IV, A.) is carried forward from the 2012 USFS MRP and is designed to require each National Forest to provide details of on-the-ground prescriptions developed for a particular Category B project. RWB review of on-the-ground prescriptions provides evaluation of site-specific treatment details that are not specified in the USFS Region 5 and National BMP Guidance.

18. Summary of Comments: The draft 2015 USFS Waiver and MRP do not provide enough emphasis on management of post-fire landscapes, especially in key watersheds and 303(d) listed watersheds. The draft 2015 USFS Waiver and USFS should focus more attention on evaluation and treatment of roads in burned areas. Burned areas should be automatically placed into Category B with the associated monitoring that is required under the MRP for Category B project areas. Reliance on the USFS Burned Area Emergency Response (BAER) process is not sufficient as it is not focused on water quality issues. Not enough emphasis is placed on monitoring how roads in the post-fire landscape fare during storm events.

Staff Response: *The purpose of requiring more information on BAER activities in the draft 2015 USFS MRP is to better inform future RWB decisions regarding fire salvage treatments on NFS lands. Large fire salvage projects may not be eligible for enrollment under the USFS Waiver if the potential for significant water quality impacts cannot be mitigated to less-than significant levels. But the "largeness" of a project does not automatically exclude a project from Waiver eligibility. The significance of any impact from salvage operations must be viewed in context of the baseline condition, which unfortunately in the case of landscapes impacted by fire, is a poor condition for water quality. Staff agrees that emphasis on treatment of burned roads is important and that fire salvage operations are category B projects.*

Fire recovery projects will be evaluated on a case-by-case basis for eligibility under the draft 2015 USFS Waiver. The draft 2015 USFS Waiver carries over a waiver for discharges from NFS land that result from emergency actions, as defined in California Code of Regulations, title 14, section 15269, with additional discussion and provisions for its use as

it relates to fire cleanup work. (See Order findings 45-48.) Some short-term post-fire recovery actions may fall within this exemption, and will also be subject to Waiver conditions protective of water quality.

19. **Comment:** “We suggest the exception or grandfather clause allowing future USFS projects to be operated under the 2010 Waiver clause be greatly restricted so that Category B projects that are scheduled to begin in 2016 or 2017 are subject to the 2015 Waiver (not the 2010 Waiver).”

Staff Response: *Comment noted. RWB staff does not believe it is fair to apply the draft 2015 USFS Waiver and MRP conditions to projects that the USFS is currently developing NEPA for. Making this proposed change would in effect change the ground rules for project compliance with the USFS Waiver and MRP. This is why the grandfather clause was included in both the 2010 and the draft 2015 USFS Waiver.*

20. **Summary of Comments:** The USFS failed to fully comply with the Scott and Salmon River TMDL implementation MOUs. It should not take over a year to prepare a schedule for the control of “significant” sediment sources and the draft 2015 USFS Waiver should specify a completion date for the scheduled legacy sediment site treatments.

Staff Response: *Comment noted. RWB staff believe that a year is a reasonable time frame for preparation of a schedule for the repair and control of significant road and non-road related sediment sources in the Scott River watershed in accordance with the Scott River MOU, and an update to the Action Plan contained in the Salmon River Sub-basin Restoration Strategy, in accordance with the Salmon River MOU.*

21. **Summary of Comment:** What is “reasonable progress” in legacy site treatment, what is “timely implementation is necessary for sediment and temperature TMDL compliance”, and what does “reasonable” mean?

Staff Response: *“Reasonable progress”, “timely implementation”, and “reasonable” are subjective determinations, but they are important because these words express the RWB’s intent regarding this element of TMDL compliance. The reason behind draft 2015 USFS Waiver conditions to review restoration planning efforts is to keep the process of inventory, prioritization, and remediation of legacy sediment sites moving forward and making progress, but with a realistic recognition that resources may vary over time. This is why prioritization of problem areas is important, so that the most important sites are addressed first. The draft 2015 USFS Waiver requires that if there isn’t an active WRAP in a Category B project area then the USFS must inventory, prioritize, and remediate legacy sediment sites within that project area (see Project Categories A and B, B., 6., f. through h.) is designed to create an incentive to move towards an on-going program of implementation. Treatment of legacy sediment sites should be included in the scope of work for a given project in order to expand the resources available for remediation work. While not always feasible, the RWB encourages the USFS to pass cleanup costs to project proponents whenever possible. Additional language has been added to the Order to ensure that cleanup of legacy sediment sites is conducted within the scope of the project, including the time for completion.*

22. Summary of Comments: The draft 2015 USFS Waiver does not provide enough clarity on how large a 'large project' has to be to qualify to submit an alternative legacy site treatment plan. The draft 2015 USFS Waiver should outline more specifics on alternative legacy site treatment plans, such as what mechanism determines which sites to treat, how many sites, and how funding constraints may influence selection of treatments.

Staff Response: *Some Category B projects may be too large or contain project-specific conditions that make it infeasible or unnecessary to treat all legacy sediment sites within the project area. In such cases, alternative legacy sediment site treatment plans that inventory and propose to treat some portion of the largest sediment producing sites within the project area may be submitted for Executive Officer approval. A complete inventory of all legacy sediment sites within the project area may not be possible but it is expected that all of the road-related legacy sediment sites within the project area will be identified and a cost-effective approach will be developed to treat some portion of the largest sediment producing sites. Staff will evaluate alternative legacy sediment site treatment plans on a case-by-case basis for appropriateness and feasibility.*

23. Comment: "Meeting the conditions and targets listed in the Draft Waiver is dependent on regular communication between the agencies and reporting of project work and legacy site treatments. We believe that better, more frequent communication and review of work progress will result in greatly improved project performance, increased water quality protection and better Waiver compliance. There is no reason to wait a full year, or more, to identify project issues and non-compliance, and to only then correct the program's course, if things are not proceeding as planned. We suggest the Water Board and USFS formally communicate on work progress at least quarterly (even if by conference call) and physically meet at least annually to identify issues and make interim course corrections that may be needed."

Staff Response: *Comment noted. RWB and USFS staff communicates regularly on both the USFS Waiver and on individual Category B projects. Each National Forest in the North Coast Region has an assigned RWB staff liaison that is responsible for directly interfacing with USFS staff from that National Forest. RWB staff liaisons regularly conduct inspections of planned projects, active projects, and completed projects. In addition, RWB staff meets annually, or as necessary, with USFS staff at a regional scale to discuss Waiver implementation.*

24. Comment: " Condition 27 allows the USFS to seek modifications to the Waiver if the Waiver "has the effect of unreasonably constraining USFS activities." Although the Executive Officer of the Regional Water Quality Control Board must approve such a request, there is no guidance provided for what might constitute an unreasonable constraint. For example, does the lack of sufficient funds to completely carry out one or more requirements of the Waiver constitute grounds for such a determination, and for modifying Waiver requirements? At first glance, it might seem that insufficient funding would be the most obvious and logical "unforeseen circumstance" that the USFS could claim as unreasonably constraining their ability to meet the conditions in the Waiver. We do not believe insufficient funding (which is a common occurrence with USFS

budgets) is a valid reason for Waiver non-compliance or for modifying the Waiver to make things less expensive.”

Staff Response: *Comment noted. The Executive Officer can consider a request for Waiver modification by the USFS, but only the Board can modify the Waiver. The exception is the Monitoring and Reporting Program, which can be modified by the Executive Officer.*

25. **Summary of Comments:** Condition 1 of the draft 2015 USFS Waiver is not specific enough in defining what ‘actively addressing’ all legacy sediment sites means. Treatment of legacy sediment sites outside of USFS project areas is accomplished under the WRAP process, but implementation is slow and the draft 2015 USFS Waiver should include set timeframes for implementation of WRAPs. The USFS should provide a schedule for treatment of legacy sediment sites for all Category B projects containing a defined timeframe for treatment.

Staff Response: *See response to comments 2 and 15. The draft 2015 USFS Waiver recognizes that the USFS WCF and associated WRAP processes provide a mechanism for legacy sediment site prioritization and treatment at the watershed scale. Draft 2015 USFS Waiver Category B condition 1 states:*

*“All legacy sediment sites within Category B projects must be identified, inventoried, prioritized, scheduled, **and implemented** for treatment as part of the scope of Category B project activities, and must be complete within the project time-frame.*

The intent of the 2015 Waiver and is that by requiring legacy sediment sites are treated either within Category B projects areas or as part of a defined WRAP within a priority watershed defined by the WCF will result in measurable progress towards TMDL implementation on NFS lands.

26. **Comment:** “We suggest that trading of treatment of legacy sediment sites only be approved if continued access will be readily available for the future treatment of traded sediment sites remaining in the former project area. If access is permanently or unreasonably cutoff for the traded site or sites within the project area, then it should not be traded and it should be treated as a part of the project. If the in-project legacy sediment site is of very low priority of volume, then trading may be a reasonable and preferred alternative, even if access is no longer available.”

Staff Response: *Comment noted. Staff agrees that considering future access to untreated legacy sediment sites should be a factor in deciding whether the USFS’ legacy sediment site treatment proposal is appropriate for a given Category B project.*

27. **Comment:** “We believe the requirement for site stabilization (usually mulching) of disturbed areas should be extended to include weekends and holiday periods when there is a 30% or more chance of rain forecast during the period when workers will not be at the site.”

Staff Response: *Comment noted. The draft 2015 USFS Waiver, Projects Category A and B, Category B Conditions, No. 12 states: “Areas where soil has been disturbed by project*

activities, excluding grazing, within designated riparian zones must be stabilized prior to the beginning of the winter period, and prior to sunset if the National Weather Service forecast is a “chance” (30 percent or more) of rain within the next 24 hours, or at the conclusion of operations, whichever is sooner.”

28. Comment: “We recommend that several additional items be included in the required information in the Waiver Application:

- 1) A schedule of implementation for legacy sediment sites, including sites or groups of sites to be treated by year (a timeline), and a completion date for treatment of all legacy sediment sites within the proposed project area; and
- 2) A monitoring plan for both implementation and effectiveness monitoring of the legacy sediment site treatments (see MRP).”

Staff Response: *Please see response to comment 25. In addition, implementation and road-related effectiveness monitoring are required for all Category B projects under the draft 2015 USFS MRP. Implementation and road projects effectiveness monitoring covers the entire project area, including where legacy sediment site treatments would occur.*

29. Comment: “Project type 6 - Under Category A projects, Project type 6 includes certain road upgrading and road maintenance work that can actually result in erosion and sediment delivery to streams. ... We suggest these specific road-related project activities are best classified as Category B projects types because they have at least a moderate likelihood of resulting in erosion, sediment delivery (pollution) and water quality impacts. Project type 14 – It is unclear if non-emergency fire restoration on roads includes work on hydrologically connected roads and ditches. Sometimes these road reaches may not be obvious to the untrained observer. We recommend that any grading or excavation work completed on hydrologically connected road surfaces and ditches be classified as a Category B project type. This would include road grading, ditch cleaning, cutbank shaping or stabilization, and any other ground disturbing activity.”

Staff Response: *Thank you for your comment. We have clarified which activities are covered under Category A project types 6 and 14 in Attachment A of the proposed 2015 USFS Waiver. Certain road maintenance activities with a low risk of discharge of sediment to watercourses are project activities that should continue to be enrolled under Category A of the draft 2015 USFS Waiver.*

30. Comment: “Some National Forests in the West implement a road treatment type called “Road Storage.” It is a road treatment that is sometimes employed to “close” a road to traffic and to install some (but not all) stabilizing treatments. It is not considered decommissioning in that stream crossings may be dipped to prevent stream diversion, but most of the road fill is still left in place, along with the culvert. ... Road Storage is not listed as a Category B Project in Appendix B, but it has a significantly greater risk of road failure and sediment delivery (water quality impacts) than many other treatments listed in the Appendix B table.

We recommend Road Storage, and other unnamed but similar road treatment types designed to temporarily deactivate roads without applying full decommissioning

treatments to eliminate the potential for erosion and sediment delivery, be included in the Category B Project types.”

Staff Response: *Thank you for your comment. We have expanded the description of Category B project type 7, Road Decommissioning, to include road storage / road deactivation in the proposed 2015 USFS Waiver.*

31. **Comment:** “Road surface reshaping and slope grading projects involving grading and disturbance to road surfaces, ditches and other slope areas have the potential to impact water quality. These might or might not fall under road maintenance, storm-proofing, upgrading or one of the other Category B project types, but their specific, beneficial purpose is to hydrologically disconnect roads and other bare areas from streams.

1) We recommend Hydrologic Disconnection, including the grading and excavation work designed to reshape bare areas or roads, alter road and ground surface drainage patterns, or dewater connected gullies, be included in the Category B Project types.”

Staff Response: *Comment noted. Please see response to comment 30.*

32. **Summary of Comments:** The requirements of the draft 2015 USFS MRP should be incorporated into the Klamath National Forest (KNF) MP/QAPP, or the draft 2015 USFS MRP should replace the KNF MP/QAPP entirely.

Staff Response: *The new monitoring and reporting requirements of the 2015 USFS MRP are incorporated into the KNF MP/QAPP (see draft 2015 USFS MRP section VIII, A., 3; B., 1).*

33. **Comment:** “Interpretation of the Forest-wide In-Stream Monitoring results may be plagued by large, random, natural events that interfere with cause and effect interpretations. These spatially and temporally “random” events are likely to mask the ability to conclusively link the improved Waiver-related land use practices with observed (improved or worsened) changes in channel/water quality conditions. Long term trends in conditions will be apparent, but their relation to compliance activities under the Waiver will not be verifiable. Regardless, we believe the broad monitoring network will be a valuable tool to track regional conditions, including both deterioration and improvement, in stream channels and watershed conditions over time, whether or not they can be traced to waiver-related effects.”

Staff Response: *While it often is difficult to attribute specific landscape activities with a specific impact, long-term monitoring provides important information on trends in stream conditions that relate to the overall condition of a watershed. We have experience with the usefulness of in-channel monitoring in a number of watersheds in the north coast and are supportive of the monitoring approach the USFS uses on NFS lands. Additionally, sections IV, V, and VI of the draft 2015 USFS MRP address project-level monitoring efforts that augment the assessment of in-channel conditions provided through the forest-wide in-stream monitoring network.*

A balanced monitoring approach also requires that disturbance activities be monitored.

While providing verification that particular practices were used to avoid impacts to water quality (a preventative emphasis), that monitoring also provides information on the effectiveness of the practices, and in the event a change is seen in a trend station, may provide useful information regarding the linkage to on-the-ground activities. The draft 2015 USFS MRP requires the USFS to perform both implementation and effectiveness monitoring: a checklist approach to verify 100 percent implementation of on-the-ground prescriptions and road projects effectiveness monitoring evaluate 100 percent of implemented on-the-ground prescriptions relating to roads in Category B project areas.

- 34. Summary of Comments:** The draft 2015 USFS MRP should contain additional clarification on what a storm patrol-triggering event is. Storm patrols should provide additional information on post-storm road conditions and a forest-wide system of road maintenance classifications should be implemented.

***Staff Response:** Thank you for your comments; we have clarified road patrol language in the storm patrol monitoring section of the proposed 2015 USFS MRP and will discuss your proposed road monitoring prioritization strategy with the USFS. Each National Forest tracks road-related maintenance issues; however, there may be differences between how each National Forest tracks and schedules treatment of maintenance issues, so institution of a global tracking system across all National Forests in the North Coast Region is not feasible within the scope of the current Waiver and MRP renewal process. Road projects effectiveness monitoring has been added to the draft 2015 USFS MRP to better inform RWB staff on effectiveness of USFS on-the-ground prescriptions relating to roads.*

- 35. Comment:** “We suggest the time line for preparation and implementation of the In-Channel Monitoring Plans be shortened, so that at least some baseline monitoring can begin by late 2016 (prior to the proposed date of March, 2017).”

***Staff Response:** Each National Forest in the North Coast Region has some form of in-channel monitoring program currently in place. The requirement in the draft 2015 USFS MRP to develop a forest-wide in-channel monitoring network will not disrupt current monitoring activities currently in place in each National Forest, but will augment the scope of those efforts once the draft 2015 USFS MRP is fully implemented. Klamath National Forest already has an approved Monitoring Plan/Quality Assurance Project Plan (MP/QAPP) in place and will continue implementation of its in-channel monitoring plan. Six Rivers National Forest has submitted a draft MP/QAPP for RWB review. The remaining three National Forests will have to begin development of MP/QAPPs and RWB staff believes the current submittal date of those MP/QAPPs is appropriate.*

- 36. Comment:** “We suggest the Regional Water Board and the USFS consider sampling the monitoring site network once every five years, all in one year, rather than measuring 20% of the network each year. This will enhance data comparisons and trends across the Forest, and result in more consistent measurement techniques using one crew to take all measurements.

In the second part of the MRP requirement, we assume that following each 10-year (or larger) storm event all monitoring sites across the Forest will be measured in the same year. The MRP should be more specific as to whether the storm event is a 10-year

runoff event or a 10-year precipitation event, and where that triggering measurement is to be taken on the Forest. Identifying the triggering event types (rainfall or streamflow) and location should be spelled out in the MRP. In addition, some part(s) of the Forest may not experience a 10-year event, while other areas might exceed that storm magnitude. If that is the case, are measurements to be restricted to part of the in-stream network, or will the entire network be measured to identify the differing responses? The latter is probably preferable for establishing the effects of large storm events on water quality and channel conditions.”

Staff Response: *Thank you for your comments. We will discuss your comment regarding the timing of SCI monitoring with USFS staff and we have added additional language into the proposed 2015 MRP clarifying the definition of a major storm event that would trigger an accelerated in-channel monitoring schedule.*

37. **Comment:** “1) The USFS Travel Analysis Process (TAP) is used “to identify roads that are suitable for decommissioning...” We strongly believe that care should be taken not to confuse “roads that are suitable for decommissioning” with “roads that are in need of decommissioning” (on the basis of their threat to water quality). They are two quite different concepts, and USFS road decommissioning is sometimes aimed at decommissioning roads that are no longer needed, in order to remove them from the maintained road network (rather than because they are a threat).

For the purposes of meeting the requirements of the 2015 Waiver and MRP, we strongly recommend that Forest roads be prioritized for decommissioning based on their documented threat to water quality rather than simply on their lack of need in the transportation system. Their priority for decommissioning treatment should be based on the magnitude and likelihood of failure and consequent sedimentation, as well as the sensitivity of the receiving waters.”

Staff Response: *The Travel Analysis Process (TAP) is a “tool in the toolbox” used by the USFS to assess and develop the minimum road network (MRN) necessary for each National Forest. RWB staff appreciate the commenter’s concern that relying on the TAP alone to determine all road decommissioning decisions would not be appropriate. The TAP is informed by and relies on linkages between MRN planning and the WCF, so there is a larger feedback from USFS restoration efforts into the Travel Analysis process². Road decommissioning is a Category B activity, and RWB staff will continue to work with each National Forest to evaluate each Category B project application for enrollment under the draft 2015 USFS Waiver.*

38. **Summary of Comments:** How old are the existing USFS road inventories and what information do the USFS road inventories include? Road inventory data should be made public to stakeholders.

Staff Response: *Thank you for your comments; we have clarified the description of road inventory language in the road and trail monitoring section of the 2015 USFS MRP. Road*

² USFS Pacific Southwest Region, 2012, *Guidance for Region 5 Forests to complete Travel Analysis*, figure on pp. 9: http://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5435091.pdf

inventories are completed by each National Forest individually and may vary in detail and age. The purpose of requiring these inventories is to provide RWB staff with additional tools for assessing Category B project applications, and the road inventories submitted to the RWB under section IX, 2.,b. of the draft 2015 USFS MRP are part of the public record.

39. Comment: “We recommend the following items be added to the road tracking data:

- a) The definition of road storm-proofing should be clearly listed in the MRP, so that all entities are following the same protocols for implementing and tracking storm-proofing.
- b) A new tracking item should be added – the miles of road hydrologically disconnected from stream network.
- c) The reporting of “cubic yards of sediment removed” should be re-stated to say the “cubic yards of sediment preventing from being delivered to a stream.” That is the important number, not the volume sediment that was removed (excavated) as a result of road work. The former is a measure of the benefit to water quality, while the latter is a measure of the amount work that was completed. The Waiver is about benefits to water quality.”

Staff Response: *Thank you for your comments; with respect to the definition of stormproofing see response to comment 17. We have incorporated your suggested changes in section b) and c) of your comment into the road and trail patrols and inspections section of the proposed 2015 USFS MRP (section II, A., f.).*

40. Comment: “Implementation monitoring is required for all Category B projects, but there is no indication of the qualifications needed to inspect completed sites and perform the required monitoring. Annual training or specific instruction should be provided to all personnel who inspect and measure or classify monitoring data on projects. Additionally, the monitoring checklist should have a detailed description of procedures for evaluating implementation results and for correctly filling out the monitoring form. This will ensure a uniform level of assessment, data collection, analysis and reporting. The results will also be comparable from year-to-year so trends in compliance can be evaluated.”

Staff Response: *The USFS has an active training program for its employees. Implementation checklists are developed by the Hydrology staff at each National Forest for each Category B project. In addition, the RWB has developed a team of USFS liaisons who work with each National Forest to assist USFS staff in understanding the details of the Waiver, conduct training in the office and in the field, and are available to address issues with the Waiver process as they may arise.*

41. Summary of Comments: The road projects effectiveness monitoring requirements in the draft 2015 USFS MRP should be expanded to include more quantitative multi-year assessments of site treatment effectiveness.

Staff Response: *Comment noted. Road projects effectiveness monitoring is designed to build on the existing checklist approach developed for implementation monitoring in the 2012 USFS MRP, and to provide RWB staff with information regarding the on-the-ground*

prescriptions and BMPs utilized by USFS staff on a Category B project. This monitoring will provide important information to the RWB and USFS on the effectiveness of road project BMPs and on-the-ground prescriptions and whether BMPs and on-the-ground prescriptions need modifications in future road projects.

42. Comment: “Three “areas” or elements are to be assessed for the effects of livestock grazing (top page 10):

1) near stream riparian and streambank conditions, 2) wetland areas, and 3) pathogen indicator bacteria. We suggest at least two (2) more indicators/features be monitored or surveyed for grazing impacts that can affect water quality. These include: 4) livestock crossings of stream channels, especially of flowing streams, and including streambeds immediately upstream and downstream from crossing sites where fencing has not excluded stock wandering, and 5) livestock watering sites, where livestock congregate, impacts are concentrated and soil compaction increases the rate of pollutant runoff during precipitation events.”

Staff Response: *The draft 2015 USFS MRP requires the USFS to develop annual grazing monitoring plans. These plans will provide an assessment of key grazing areas within the selected grazing allotment(s). Key grazing areas are defined in the MRP as locations within allotments where livestock grazing primarily occurs as opposed to forested areas that may receive little grazing pressure. The locations of livestock crossings and watering sites within an allotment are likely to be contained within these key grazing areas.*

43. Comment: “Pathogen indicator Bacteria Monitoring (page 12) – The MRP states that grazing allotments cover approximately 18% of the National Forest lands on the North Coast. It is a pervasive land use and one that can have important impacts on downstream water quality and beneficial uses. The MRP requires the USFS to develop “an allotment monitoring plan to monitor one “key” (undefined term) grazing areas within one allotment.”

We believe it is important to provide a more thorough design, better sampling strategy and more accurate picture of the magnitude and spatial distribution of Forest-wide grazing impacts on water quality and downstream beneficial uses than can be derived from a single monitoring project on one allotment per year.

We believe a reasonable and more statistically relevant sampling strategy should be employed to determine grazing impacts on water quality under a variety of conditions and locations, considering geography, topography, number of cattle, grazing locations and controls, and other relevant factors that can affect water quality parameters. This is important because of the widespread use of grazing across National Forest lands, and especially because of the potential implications of grazing impacts on water quality, downstream beneficial uses and human health.”

Staff Response: *Key grazing areas are defined in the draft 2015 USFS MRP (section V., A.) as locations within allotments where livestock grazing primarily occurs as opposed to forested areas that may receive little grazing pressure. Each National Forest in the North Coast Region is required to conduct pathogen indicator bacteria sampling each year. As NFS lands cover such a large portion of the North Coast Region, it is anticipated that the*

geographic and topographic variability, coupled with variations in the scale of grazing operations conducted on each of the five allotments monitored per year, will begin to provide the RWB and the USFS with an assessment of grazing activities and potential threats to water quality in the North Coast Region.

D. The North Group Redwood Chapter of the Sierra Club and the Project to Reform Public Land Grazing in Northern California

44. **Comment:** “The North Group and the Project appreciate the effort that staff members have made to improve the 2010 Waiver. In particular, we appreciate the recognition by NCRWQCB staff that grazing, as currently managed on the national forests of the region, has significant and long lasting negative impacts on water quality, headwater hydrology, riparian areas and other wetlands which are not just in the area where the grazing occurs but which play a significant role downstream in our salmon refugia and in streams from which human communities draw drinking water.”

Staff Response: *Thank you for your comments. See also response to comment 11.*

45. **Summary of Comments:** Given the degraded condition of North Coast water quality, the requirements in the draft 2015 USFS Waiver & MRP may be an advance beyond the 2010 USFS Waiver and 2012 USFS MRP but should be further strengthened.

Staff Response: *See response to comment 11.*

46. **Comment:** “The proposed waiver includes this statement: The 2010 Waiver functioned well in providing a framework for permitting non-point source activities and protecting water quality on USFS lands over the past five years; A waiver under which key watersheds and salmon refugia have declined in function, including declines in measured water quality, ought not to be judged as having “worked well”. Furthermore, as one board member remarked at a recent board meeting, the current waiver permit contains too many loopholes. Poor FS performance under the existing waiver demonstrates that when loopholes are provided, FS managers will exploit them to avoid requirements imposed by other agencies. Therefore, please go through the draft with a fine toothed comb in order to eliminate loopholes which will make it possible for FS managers to claim compliance with the CWA while avoiding the substantive requirements of the waiver permit.”

Staff Response: *RWB staff are not aware of any loopholes in the draft 2015 USFS Waiver and specific loopholes were not identified by the commenter. Many factors influence the function of key watersheds and salmon refugia over time. RWB staff do not believe that performance of activities authorized and conducted under conditions of the 2010 Waiver is responsible for a decline in the function of key watersheds and salmon refugia over the past five years. Also see response to comment 12.*

47. **Comment:** “The FS did not fully comply with the requirement to provide and update watershed restoration plans, including legacy site identification, prioritization, and scheduling. Because the waiver relies heavily on restoring legacy sediment sites, FS failure to meet that requirement is significant.”

Staff Response: *See response to comment 25.*

48. **Comment:** “The FS failed to “include within..... contracts, grazing permits, agreements, and other instruments used to direct the activities of contractors, grazing permittees, USFS personnel, or volunteers, or any other third parties specified in this Waiver, the specific on-the-ground prescriptions that are designed to meet the USFS BMPs.””

Staff Response: *Comment noted. RWB staff will prioritize assessing compliance with this requirement.*

49. **Comment:** “The FS failed to fully comply with the Scott and Salmon River TMDL implementation MOUs.”

Staff Response: *See response to comment 20.*

50. **Summary of Comments:** RWB staff should prepare a publically available report, addressed to the USFS Regional Forester, on annual monitoring and reporting lapses by the USFS. This report should be prepared due to the failure of the USFS to comply with the reporting requirements of the 2012 USFS MRP.

Staff Response: *Comment noted. RWB staff do not believe such a report is necessary given the high amount of USFS and RWB staff collaboration, both in annual meetings with combined staffs of the RWB and USFS and through the regular contact between individual National Forest staff and the RWB staff liaison to that National Forest.*

Nevertheless, we have made many changes to the draft 2015 USFS MRP to improve reporting requirements relating to annual progress towards TMDL implementation (see draft 2015 USFS MRP section IX, A., 6., a.) and an annual summary of road maintenance and improvement activities (see draft 2015 USFS MRP section IX, A., 2., c).

51. **Summary of Comments:** The draft 2015 USFS Waiver and MRP should rely less on USFS administrative processes and more on performance-based measures of compliance.

Staff Response: *See response to comments 2 and 12. The draft 2015 USFS Waiver and MRP rely on a blend of certifying USFS processes and using performance-based evaluations, such as the road projects effectiveness monitoring requirement introduced in the draft 2015 USFS MRP.*

52. **Summary of Comments:** The 2010 USFS Waiver and the draft 2015 USFS Waiver both lack consequences for the USFS when it fails to comply with Waiver requirements. The Forest Service has financial incentives to carry out project activities and financial disincentives to implement conditions of the waiver. Voluntary compliance mechanisms relied upon by the 2010 USFS Waiver and draft 2015 USFS Waiver do not adequately ensure implementation of waiver conditions. The RWB should allocate resources to conduct inspections and enforce waiver conditions and effectiveness monitoring on NFS lands.

Staff Response: *Comments noted. The USFS Waiver does not preclude the RWB from administering enforcement remedies pursuant to the Water Code. It is the intent of RWB*

staff to conduct regular inspections and enforce Waiver conditions, including the submittal of annual reports.

53. **Summary of Comments:** The draft 2015 USFS Waiver should impose restrictions on wet weather operations due to 303(d) listings or sensitive post-wildfire landscapes.

Staff Response: *Thank you for your comments. We have added a requirement for the USFS to submit wet weather operations (WWO) standards as part of the Category B application process (See proposed 2015 USFS Waiver, Project Categories A and B, C, 6., i.).*

54. **Summary of Comments:** The draft 2015 USFS Waiver and MRP should rely less on the USFS random BMP process for implementation and effectiveness monitoring. BMP categories that rate at consistently lower levels of effectiveness, such as grazing allotment management and mining activities, through those random BMP monitoring results than most other BMP categories should be subject to additional requirements under the draft 2015 USFS Waiver and MRP.

Staff Response: *Comment noted. Please see response to comment 12. In addition, several portions of the draft 2015 USFS MRP, including implementation monitoring (see draft 2015 USFS MRP section IV, B.) and road projects effectiveness monitoring (see draft 2015 USFS MRP section IV, A.) require the USFS to provide additional information on the on-the-ground prescriptions used to implement the BMPs described in USFS Guidance. On-the-ground prescriptions are evaluated by RWB staff as part of a Category B project's USFS Waiver application. Mining discharges are not covered under the USFS Waiver, (see draft 2015 USFS Waiver, finding no. 6) and the draft 2015 USFS MRP contains additional monitoring requirements for grazing allotments (see draft 2015 USFS MRP section V).*

55. **Summary of Comments:** The draft 2015 USFS Waiver should require that at least fifty percent of USFS funds required to address legacy site treatment for a USFS project be directed from normal USFS funds rather than via grants or other sources.

Staff Response: *See comment 13. It is not the RWB intent to dictate how the USFS provides funding for projects. Rather, the Waiver provides a mechanism for a cooperative partnership between agencies to maximize efficiency while emphasizing water quality protection.*

56. **Comment:** "The FS is very good at producing paper plans; the agency is not very good at implementing those aspects of plan that do not involve resource extraction."

Staff Response: *Comment noted.*

57. **Summary of Comments:** The draft 2015 USFS Waiver should require the USFS to develop updated wet weather operations standards and RWB should enforce those WWO standards on NFS lands.

Staff Response: *Proposed WWO standards are evaluated as a part of the Category B project application process, as introduced in the proposed 2015 USFS Waiver (see proposed 2015 USFS Waiver, Project Categories A and B, C, 6., i.). If aspects of WWO*

standards are not deemed appropriate for a specific Category B project, RWB staff will work with USFS staff to make changes to the WWO standards for that project prior to enrollment under the Waiver.

- 58. Summary of Comments:** The draft 2015 USFS Waiver should mandate Minimum Impact Suppression Tactics for all wilderness and roadless areas.

Staff Response: *Comment noted. Fire suppression is an emergency action conducted by firefighting professionals. Proscribing their activities could complicate the effective response to fire situations. However, in order to better track USFS fire suppression activities, we have included requirements for reporting Burned Area Emergency Response (BAER) reports in the draft 2015 USFS MRP (see draft 2015 USFS MRP, section VI).*

- 59. Summary of Comments:** Current USFS grazing management practices are not protective of water quality and the draft 2015 USFS Waiver and MRP should provide additional specific requirements to ensure protection of water quality standards. Proposed changes include requiring NEPA be completed on all active grazing allotments, annual operating instructions (AOIs) be issued to permit holders each year, requiring rest rotation grazing, requiring riparian fencing and/or requiring grazing cease on a specific allotment given overutilization, and to encourage a more collaborative approach with USFS personnel to implement Waiver and MRP conditions.

Staff Response: *Thank you for your comments. Language was added to the proposed 2015 USFS MRP clarifying the purpose of allotment monitoring plans as they address many of these concerns (see proposed 2015 USFS MRP section V). Allotment monitoring plans provide an adaptive management tool to help improve water quality conditions on USFS grazing allotments. In consultation with RWB staff, review of an allotment monitoring plan may result in changes to grazing practices on a particular grazing allotment. The requirement to develop and implement allotment monitoring plans is an annual requirement that is not directly linked to Category B project enrollment, this means that each National Forest will develop an allotment monitoring plan for at least one grazing allotment per year. The draft 2015 USFS MRP gives monitoring priority to grazing allotments proposed for renewal within the next one to three years (see draft USFS MRP section V). Potential management changes may include modifying the number of cattle, rest rotation grazing, exclusionary fencing of riparian and wet areas, and other on-the-ground prescriptions that are designed to improve water quality protection.*

Grazing allotments are not eligible for coverage under the Waiver until they go through reauthorization and NEPA. If the commenter is recommending the Waiver require reauthorization and completion of NEPA on all active grazing allotments, staff agrees that active grazing allotments should go through reauthorization and NEPA and we will continue to encourage this approach. However, requiring this management approach is beyond the scope of the Waiver.

- 60. Summary of Comments:** Impacts to the riparian zones of watercourses as a result of grazing should be defined as legacy sediment sites. Grazing allotment projects shouldn't be exempted from legacy sediment site treatment requirements for Category B projects.

Staff Response: *Your comments are noted. Staff do not agree that any impact to riparian zones should be defined as a legacy sediment site or that grazing allotments should not be exempt from legacy sediment site treatments. The draft 2015 USFS MRP has additional monitoring requirements for grazing allotments to assess potential impacts to streambanks and riparian areas from current management approaches. This begins an adaptive management framework for improving BMPs and grazing management.*

61. Summary of Comments: Coverage under the draft 2015 USFS Waiver and MRP should be required for grazing allotments operated outside NFS lands under Special Use Permits.

Staff Response: *This Waiver and MRP requirements only cover discharges from activities on NFS lands and do not apply to activities on adjacent private parcels.*

62. Summary of Comments: The USFS definition of reference sites, especially in areas that have experienced high-intensity fires, is flawed and should not be relied upon in the draft 2015 USFS Waiver and MRP.

Staff Response: *Comment noted. The reference site definition and use in the in-channel monitoring section of the draft 2015 USFS MRP has been modified as a result of additional information from several National Forests in the North Coast Region relating to the difficulty of establishing a reference / management paired watershed monitoring network.*

The response below was taken from the Staff Report for the 2012 Integrated Report for the Clean Water Act Section 305(b) Surface Water Quality Assessment and the 303(d) List of Impaired Waters, NCRWQCB, 2014:

“Regional Water Board staff acknowledge that fire regimes have changed in forests over the last 100 years. However, this does not necessarily preclude watersheds with a change in fire history from being included as reference watersheds.

Sediment and temperature reference stream criteria were developed by the Klamath National Forest (KNF), and reviewed and approved by Regional Water Board staff, utilizing the guidance document that the State Water Board’s Surface Water Ambient Monitoring Program uses titled “Recommendations for the development and maintenance of a reference condition management program (RCMP) to support biological assessment of California’s wadeable streams” (Ode and Schiff 2009). Ode and Schiff state that the water bodies that have had “natural disturbance such as forest fires” should be kept in the reference pool. However, the “Klamath National Forest Sediment and Temperature Monitoring Plan and Quality Assurance Project Plan” (KNF 2010) criteria does allow for a stream’s data to be temporarily removed from the reference pool in extreme circumstances where a significant portion of the watershed has been significantly impacted (e.g., severely burned), if such a determined is warranted.

Regional Water Board staff conducted an audit of the process utilized by KNF staff to identify reference streams, which included reviewing the protocol for using GIS and aerial

photographs to ensure that candidate watersheds met the thresholds for reference streams. Additionally, field validation inspections were conducted by Regional Water Board staff in Fort Goff Creek and Portuguese Creek in March of 2013. Staff reported that the fire suppression activity within the riparian reserves did not appear to result in burn severity that was significantly greater than on the surrounding landscape, and the burn severity along Fort Goff and Portuguese Creeks was noted as “low to very low within a patchwork of moderate soil burn severity (Williams 2013).” Staff concluded that the KNF were following the criteria for selecting reference streams, and the field inspections verified that conditions were supporting beneficial uses and that the watersheds were suitable as reference watersheds (Williams 2014).

Miller et al. (2012) studied trends in fire size, fire frequency, and the percentage of high-severity fires in northwest California. Miller et al. report that although fire size and frequency are important they do not necessarily scale with ecosystem effects of fire. Their study found that while fire size and total annual area burned increased from 1910- 2008, there was no temporal trend in the percent of high severity fires.

If future data and information reflect that a reference watershed’s data should be temporarily removed from the reference pool, then Regional Water Board staff will consider that information. For the present, staff are recommending that all water bodies identified as meeting the reference criteria be removed from the 303(d) List for sediment and temperature.”

- 63. Summary of Comments:** The draft 2015 USFS Waiver and MRP should be revised to include additional public participation and review of draft USFS monitoring plans submitted as requirements under the USFS Waiver and MRP.

***Staff Response:** The MRP prescribes the monitoring frequency, locations, and metrics required in annual grazing monitoring plans. Alternatives that provide similar information can be proposed subject to Executive Officer approval. It is appropriate for RWB staff to review draft monitoring plans while working jointly with USFS staff in the development of monitoring plans. Final monitoring plans will be available to the public for review and RWB staff will consider any public comments received in subsequent annual monitoring plans.*

- 64. Summary of Comments:** We support the new grazing monitoring requirements introduced in the draft 2015 USFS MRP.

***Staff Response:** Thank you for your comment.*

- 65. Summary of Comments:** The draft 2015 USFS Waiver should contain a definition of key grazing areas.

***Staff Response:** Comment noted. A definition of key grazing areas was added to the draft 2015 USFS MRP (see section V., A.):*

“Key grazing areas are locations within allotments where livestock grazing primarily occurs as opposed to forested areas that may receive little grazing pressure.”

66. The draft 2015 USFS MRP should require assessment of all Multiple Indicator Monitoring (MIM) conducted on grazing allotments and that shade monitoring should be conducted on the ground (as opposed to aerial monitoring) at the same time.

Staff Response: *The draft 2015 USFS MRP includes a requirement for streambank stability monitoring utilizing a suite of in-channel and near-channel monitoring protocols including MIM, and allotments shall be selected via collaboration with Regional Water Board staff as part of the new annual grazing monitoring plan process (see draft 2015 USFS MRP section V., A.). Requirements for shade monitoring are incorporated into the KNF MP/QAPP, and modifications to the KNF MP/QAPP can be made as part of an adaptive management approach.*

67. **Comment:** “In summary, our national forests should be a source for the "favorable conditions of flow" which is a main purpose for which the national forests were established. With respect to national forests in the region, it is the North Coast Water Board's responsibility to assure that FS managers fulfill that promise as perfected via the Clean Water Act.”

Staff Response: *Comment noted.*

E. The Klamath Forest Alliance / Environmental Protection Information Center

68. **Comment:** “While our organizations understand the desire to streamline permitting processes for the efficiency of both the Water Board and the Forest Service, agency efficiency cannot come at the expense of water quality protection. We urge you to provide greater water quality protections of our rivers and streams in National Forests than the Draft Waiver would afford; indeed, we believe that your legal mandate requires this of you.”

Staff Response: *See response to comment 11.*

69. **Comment:** “The degraded condition of the Klamath River and many other waterbodies in our region, and the multiple and ongoing threats to these waterbodies, underscore the need to promulgate stronger water quality protections for National Forest lands.”

Staff Response: *See response to comment 11.*

70. **Comment:** “...the Draft Waiver covers impacts associated with a range of different activities with very different levels and types of water quality impacts. In different national forest, some of these activities are more prevalent and cause greater water quality impacts than in others. Thus, a one-size-fits-all approach is not appropriate across such a large and variable region. Instead, waivers should be tailored to individual national forests, or to groups of national forests with an explanation of why it is appropriate to group them together under one waiver.”

Staff Response: *Comment noted. We agree that there is spatial variability across NFS lands in the North Coast Region. The USFS address variability across the NFS lands and between Forests by allowing individual Forest staff the flexibility to design projects and programs that address the unique features of their Forests. Also, each project is reviewed under Category B, a process that provides the appropriate specificity for a given project.*

71. **Comment:** “In order to comply with established TMDLs and to protect water quality, the Draft Waiver should be revised to prohibit activities which have the potential to discharge wastes to waters of the state that have zero load allocations—the only way to reliably comply with zero load allocations.”

Staff Response: *Comment noted. Actual load allocations and targets may vary from one TMDL to another, all address the basic issues of reducing and preventing excess sediment inputs and of decreasing water temperature by protecting and restoring natural shade.*

72. **Comment:** “The scope of USFS random BMP effectiveness programs is too broad and should be implemented on every project and the checklist approach utilized by the draft 2015 USFS MRP is not detailed enough to record measurable impacts.”

Staff Response: *Comment noted. Please see response to comment 54. Road Projects Effectiveness Monitoring was added to the 2015 USFS MRP in order to better characterize performance of road-related BMPs and on-the-ground prescriptions.*

73. **Comment:** “The Draft Waiver should be revised to require that the Forest Service (FS) provide evidence of secured funding for legacy site treatment proposed in each project enrolled under the waiver.”

Staff Response: *See response to comment 13.*

74. **Comment:** “In order to protect and enhance water quality in our region, the Forest Service should be required to treat all legacy sites for all projects—regardless of size—that are enrolled under the waiver.”

Staff Response: *See response to comment 22.*

75. **Comment:** “The 2015 Waiver should have a firm end date for legacy sediment source treatments. It has to be firm or this part of the Waiver is not very useful. If the FS delays completion for a long time, the sites will just fail and erode instead of being treated. If the FS can’t afford to operate under the Waiver, it should not be granted a Waiver.”

Staff Response: *See response to comment 25.*

76. **Comment:** “From page 18 of the Draft 2015 waiver, “Timely implementation is necessary for sediment and temperature TMDL compliance.” The Final Waiver should be explicit in the definition of “timely”.”

Staff Response: *See response to comment 21.*

77. **Comment:** “Further the Draft uses the word reasonable with no clear definition or measurable outcome. The Final Waiver must address what “reasonable” means and provide a measurable outcome.”

Staff Response: *See response to comment 21.*

78. **Comment:** “While the Draft Waiver is an improvement to the 2010 Waiver, it still relies on process requirements and checklists rather than actual and measurable outcomes. Please incorporate specific and measurable standards in the 2015 Waiver.”

Staff Response: *See response to comment 11.*

79. **Comment:** “In many circumstances, the Forest Service has financial incentives to carry out project activities, and financial disincentives to implement conditions of the waiver, and we do not believe that voluntary compliance adequately ensures implementation of waiver conditions. The North Coast Regional Water Quality Control Board should allocate resources for Water Board staff to conduct inspections and enforce waiver conditions and effectiveness monitoring on National Forests”

Staff Response: See response to comment 52.

80. **Comment:** “The Waiver is a self-monitoring program, and it’s possible that no one from the Water Board is actively tracking the status of the required Waiver elements. This has potential to be a huge problem. We would like to suggest that all annual reports, all annual meeting notes, and all other information and reporting filed by the USFS be posted to the Water Board web site for the public to see and review when they are received.”

Staff Response: Oversight of the monitoring and reporting requirements of the draft 2015 USFS MRP are shared by RWB staff, who act as liaisons to each National Forest in the North Coast Region. These staff are responsible for ongoing review of the reporting generated by each National Forest. RWB staff will consider the recommendation to post annual monitoring reports on the Water Board website.

81. **Comment:** “Wet weather operations are one area in particular that we believe requires additional enforcement, and better incentives for Forest Service compliance with wet weather operations standards....The WWO standards need to be updated and adequately enforced.”

Staff Response: See response to comment 57.

82. **Comment:** "Further, there should be clear consequences in the 2015 Waiver if the FS violates WWO standards."

Staff Response: See response to comment 57.

83. **Comment:** “Allowing more impacts to watersheds in which water quality has already been degraded as a result of natural wildfires and discretionary fire suppression actions, is problematic and may not comply with CWA requirements. We strongly recommend a waiver provision specifying that logging and log hauling operations outside the well-defined normal operating period (Oct 1 through April 30th) is not allowed for five years from the date the fire was declared fully suppressed.”

Staff Response: See response to comment 53.

84. **Comment:** “To increase the transparency and predictability of enrollment of projects under the waiver, additional guidance should be provided on what constitutes a “significant impact.” This should include a list of types of projects that the Water Board considers to be ineligible for enrollment under the waiver.”

Staff Response: A “significant impact” can be a somewhat subjective determination but it is important because this language is extensively used in environmental legislation and regulation. Characteristics of an activity, such as intensity and proximity to surface waters, and the sensitivity of the area, will determine which BMPs and on-the-ground prescriptions are needed to ensure the activity will have a less-than-significant impact on water quality. In the final analysis, if an activity is not compliant with the Waiver, then it

is not compliant with TMDLs and another regulatory mechanism, such as individual WDRs or waiver, would have to be prepared.

85. Comment: “The condition of many of the Key watersheds and impaired watersheds has been and continues to be severely affected by wildfire and fire suppression activities. The change in baseline conditions post-disturbance must play a role in allowing or denying enrollment for projects under the 2015 Waiver.”

Staff Response: *RWB staff have proposed changes to the Waiver that recognize potential changes in baseline conditions due to wildfires and the eligibility of fire recovery projects for Waiver coverage. Also see response to comment 18.*

F. Central Sierra Environmental Resource Center

86. Comment: “Despite nice sounding wording in all sections of the BMPs, there is little substantive solid direction to actually assess whether or not water quality is being protected by the individual BMPs. Instead, BMPs tend to direct agency staff to determine whether or not a mitigation action was implemented, rather than to assess in any measurable way whether or not the BMP actually prevented contamination of receiving waters due to the mitigation measure. “Was a water bar placed on the skid trail?” is a very different question compared to “Was there any evidence of water bars being washed out or eroded, with sediment likely reaching receiving waters, within the first two years after the water bars were created?””

Staff Response: *See response to comment 72.*

87. Comment: “CSERC respectfully points to weak, nebulous, non-quantifiable BMPs as being a poor basis for accepting USFS assurance that water quality is being protected or will be protected under the new Waiver. There are certainly a large percentage of existing BMPs in Region 5 that cannot be accurately described as “performance based management measures” despite the use of that descriptive claim on page 7 (item 17) of the Waiver.”

Staff Response: *See response to comment 54.*

88. Comment: “CSERC urges the Regional Water Board to collaboratively review (with the Forest Service) the USFS BMP Manual to systematically assess which BMPs do or don’t have measurable, quantifiable standards, guidelines, or other clear thresholds or compliance language that actually result in water quality protection for affected streams, rivers, or special aquatic features. For BMPs that are jointly assessed by the Regional Water Board and the USFS as currently being non-quantifiable, weak, unclear, or not able to be measured for actual effectiveness, the Regional Water Board should provide a set time period (2 years?) for the Forest Service to internally revise the BMPs as they apply to the North Coast region so as to end up with quantifiable, measurable, assessable BMPs that will accurately reflect whether or not water quality is protected when the BMPs are implemented.”

Staff Response: *See response to comment 54.*

89. Comment: “As described in the Waiver, the Waiver contains three primary substantive components. The first component includes the maintenance and restoration of Designated Riparian Zones. The Waiver document asserts on page 4: “Only activities that protect or enhance ACS objectives are permissible within a riparian reserve.”

If the Forest Service honestly and ethically abides by that requirement, no livestock grazing can be allowed within a riparian reserve. Grazing does not “protect” ACS objectives. Grazing may not always degrade or damage ACS objectives, but grazing does not protect those objectives. Furthermore, if the Forest Service twists the meaning of “protect” to instead to mean “allow minor degradation that is not significant” then there

needs to be measurable, definable criteria to actually measure whether or not ACS objectives are being protected.”

Staff Response: *The USFS addresses the commenter’s concern regarding grazing and ACS objectives by following Attachment A of the Record of Decision for the Northwest Forest Plan which includes the following three grazing allotment guidelines:*

GM-1. Adjust grazing practices to eliminate impacts that retard or prevent attainment of Aquatic Conservation Strategy objectives. If adjusting practices is not effective, eliminate grazing.

GM-2. Locate new livestock handling and/or management facilities outside Riparian Reserves. For existing livestock handling facilities inside the Riparian Reserve, ensure that Aquatic Conservation Strategy objectives are met. Where these objectives cannot be met, require relocation or removal of such facilities.

GM-3. Limit livestock trailing, bedding, watering, loading, and other handling efforts to those areas and times that will ensure Aquatic Conservation Strategy objectives are met.

Also, please see response to comment 42.

90. **Comment:** “Monitoring and Reporting are also clearly identified as critical components of the Waiver. And yet the Forest Service consistently fails to implement desired, promised monitoring that is outlined in allotment management plans or other planning documents. Monitoring is especially important for Category B – Moderate Risk Activities – that require Regional Water Board review and additional mitigation.”

Staff Comment: *See response to comment 59.*

91. **Summary of Comments:** As a result of USFS delays and congressional directives, the USFS commonly does not complete renewal of grazing allotment permits in a timely fashion. The draft 2015 USFS Waiver and MRP should require a three year timeframe for all grazing allotments to incorporate management direction that minimizes water quality degradation and degradation of streambanks, riparian habitat, and aquatic systems.

Staff Response: *The reason behind the 2015 USFS MRP requirement for each National Forest to annually develop allotment monitoring plans is to better assess the effects of grazing on NFS lands, but with a realistic recognition that resources may vary over time. This is why focusing requirements on priority grazing allotments is important, so that the most important sites, such as grazing allotments up for renewal, are addressed first. The purpose of the monitoring requirements in the draft 2015 USFS MRP is to provide USFS and RWB staff an opportunity to collaboratively identify and fix potential impacts to water quality and inform management practices across NFS lands in an adaptive management framework.*

92. **Comment:** “CSERC urges that the MRP USFS Waiver spell out that utilization monitoring shall be required to be done annually by the Forest Service for all allotments where livestock grazing is allowed.”

Staff Response: *The Waiver and MRP build on existing USFS monitoring frameworks to prioritize their resources in order to evaluate USFS grazing allotments.*

93. **Comment:** “Because our Center’s biologist has been involved for years in water monitoring for pathogenic bacteria, we strongly support the requirement on page 17 that each national forest shall prepare and submit a comprehensive MP/QAPP for the monitoring and reporting activities to be implemented. The list of elements identified in item 3 on that page appears logical and justified.”

Staff Response: *See response to comment 64.*

94. **Comment:** “Due to so many gaps in the requirements and such nebulous identification of when monitoring will actually begin, the potential is high for continued grazing degradation of water resources to continue to occur, primarily due to range management activities, unless the Waiver is strengthened.”

Staff Response: *See response to comment 59.*

G. California Farm Bureau Federation / California Forestry Association / California Cattlemen's Association

95. **Comment:** "Our organizations believe that any waiver should be drafted in a manner consistent with the required conditions to comply with the Porter-Cologne Water Quality Control Act (Porter-Cologne). The purpose of this approach is to minimize regulatory overlap and conflict where possible. Any required action in a proposed waiver that is not explicitly required by Porter-Cologne creates uncertainty and potential violation by the United States Forest Service (USFS)."

Staff Response: *Porter-Cologne provides broad authority for the state, through the state and Regional Water Boards, to regulate activities and factors which may affect the quality of waters of the state. Through Porter-Cologne, the State and Regional Water Boards develop regulation, policy, plans (including Basin Plans), set water quality standards, issue permits and waivers, adopt TMDLs, and take enforcement actions, all designed to achieve the highest quality water possible. The State and Regional Water Boards also implement portions of the federal Clean Water Act that have been delegated to the state. This Waiver has been crafted to meet those regulations, policies, plans, water quality standards, and adopted TMDLs. In the broadest sense, the proposed Waiver is implementing the requirements of Porter-Cologne, and the appropriate portions of the federal Clean Water Act.*

The proposed Waiver is structured to avoid the commenters' concern with regulatory overlap and conflict. RWB staff agrees that the USFS is well suited to manage its lands in a manner which maintains and improves water quality while also providing for the multiple uses. The Forest Service's planning framework provides a unique opportunity for comprehensive permit coverage that provides better and more efficient protection of the beneficial uses of water by addressing temperature and sediment sources systematically across the landscape.

96. **Comment:** "The Forest Service should remain the sole agency to manage grazing permits and timber contracts."

Staff Response: *This Waiver does not alter the USFS being the agency managing grazing permits and timber contracts on NFS lands.*

97. **Comment:** "The Regional Water Board should only require a water quality objective, not the management practices by which that objective might be achieved."

Staff Response: *Water Code section 13360 does not limit the RWB from providing a greater level of specificity in a Waiver. Often a discharger requests certainty on what BMPs to implement in order to be in compliance and often guidance is needed. The USFS is unique in that it shares responsibility for water quality on NFS lands with the RWB through a Management Agency Agreement (MAA)/ Water Quality Management Plan (WQMP). BMPs are specified pursuant to this MAA/WQMP and therefore are not implicated under Water Code section 13360.*

USFS participation in the Waiver is presumably for the purpose of attaining water quality compliance in an efficient manner. The draft 2015 USFS Waiver provides flexibility on the range of on-the-ground prescriptions to implement BMPs on a case-by case basis. The USFS may choose to submit a report of waste discharge and request an individual permit if they find certain Waiver conditions objectionable.

98. **Comment:** “While we recognize the proposed waiver does not cover the discharge of human waste, we are very concerned that this issue is not being addressed with the same intensity as activities covered under this proposed waiver and monitoring and reporting program. The ever-increasing regional use of National Forest lands is certainly causing human waste discharges to increase.”

Staff Response: *The proposed Waiver is intended to cover most nonpoint source activities with potential to discharge sediment and temperature waste. The WQMP contains several BMPs for protecting water quality from human waste at developed and dispersed recreation sites. For developed recreation sites, there are BMPs for locating sanitation facilities. For dispersed recreation sites, a BMP prohibits placing in, or near a stream, lake, or other water body, substances, which may degrade, water quality. This includes, but is not limited to, human and animal waste. For example, the National Forests’ often restrict or direct backpackers to camp at least 100 feet from all water sources, and to dispose and bury waste at least 100 feet from all water sources. The USFS also utilizes signs, pamphlets, and public outreach to encourage the public to conduct their activities in a manner that will not degrade water quality.*

99. **Comment:** “Finding 7 states the proposed Waiver includes “additional monitoring of livestock grazing.” It is not clear whether this language refers to the additional pathogen indicator bacteria listed later in the document or something more.”

Staff Response: *The draft 2015 USFS MRP includes additional streambank, riparian vegetation, and wetlands/wet areas monitoring as detailed in section V.A.1. as well as monitoring for pathogen indicator bacteria.*

100. **Comment:** “Finding 35 discusses the proposed Waiver’s condition that the USFS and its contractors and grazing permittees implement the USFS Guidance and the USFS Best Management Practices (BMP) manual, including the identification of on-the-ground prescriptions for an individual project. An Allotment Grazing Plan and Annual Operating Instructions should be clearly stated as meeting this condition. The checklist approach should also consider annual use monitoring of riparian standards and guides.”

Staff Response: *The commenter is citing Finding 35, which by virtue of being a Finding, is a statement of fact and not a condition. Condition B.7. requires, among other things, that on-the-ground prescription and a copy of the Waiver be included in contracts or grazing permits and annual operating instructions. When the USFS incorporates on-the-ground prescriptions and other water quality measures meant to implement BMPs into grazing permits and annual operating instructions, they are compliant with this condition of the Waiver.*

101. **Comment:** “The determination required in Category B Condition 13 (regarding the determination of which “riparian zones that are disturbed by grazing...may result in significant discharge”) is highly subjective and does not include any concrete requirements to guide staff.”

Staff Response: *Category B Condition No. 13 in the draft 2015 USFS Waiver is the same as Category B Condition No. 9 in the 2010 USFS Waiver. In working with USFS staff to implement the 2010 USFS Waiver, the issue of “significant discharge” also came up. The approach agreed to was to use best professional judgment, error on the side of over reporting and build a track record of examples that refine reporting, and that generally, the term is for a discharge that violates water quality requirements.*

102. **Comment:** “The Regional Board does not need to require additional monitoring and reporting in order to comply with Porter-Cologne. The proposed MRP is unnecessary. The USFS already conducts both water quality monitoring and effectiveness monitoring of BMPs. Existing activities are already protecting water quality on California’s National Forest lands. USFS, California Region with its on-going annual monitoring program of best management practices for soil and water, updated their soil and water handbook (Dec. 2011).”

Staff Response: *Please see response to comment 2 for a partial response. The monitoring program in the 2010 Waiver was proposed by the USFS. The MRP was designed to recognize and utilize the existing USFS monitoring programs, to increase the transparency and level of BMP implementation, to help verify the effectiveness of various water quality protection measures and models, and to provide feedback on water quality protection and Waiver compliance.*

Monitoring and Reporting Program R1-2010-0029 was revised on March 21, 2012 in response to public comments and is the current monitoring program. RWB staff have worked closely with USFS staff to revise the current monitoring program.

103. **Comment:** “We are concerned about the time and expense associated with the requirements of the proposed MRP when USFS staff and budgets are already stretched so thin. Each provision of the proposed monitoring plan should be assessed under a cost/benefit analysis. For example, the pathogen indicator bacteria monitoring included in the MRP could potentially be very expensive to implement and therefore not likely to be completed by USFS. This could expose the agency to further additional legal action. The annual monitoring requirements on each National Forest are too much to accomplish annually.”

Staff Response: *The draft 2015 MRP revisions have been made in consultation with USFS staff. Many of the monitoring requirements in the draft 2015 MRP were carried forward from the existing monitoring program and rely on existing USFS programs for which they presumably already have in their budget. While some monitoring requirements have been modified or added, some requirements of the current monitoring program have been removed. For example, the option to conduct project level in-channel monitoring has been removed in lieu of the requirement for each National Forest to establish a forest-wide in-*

channel monitoring network. This revision was well received and supported by Forest Service staff, and they did not express concerns related to additional costs.

In general, proposed changes have been made in consideration of feedback from USFS staff including their experience with implementation of the current MRP. We are working with USFS staff to assure the monitoring is meaningful and achievable within their budgets.

Monitoring of pathogen indicator bacteria on grazing allotments is not a completely new monitoring requirement. Monitoring and sampling are often necessary to document whether activities and discharges authorized under the Waiver are in compliance with water quality objectives contained in the North Coast Region's Basin Plan. The MRP has been modified in response to pathogen indicator bacteria sampling results reported by the USFS conducted under the current MRP. The purpose of the new pathogen indicator bacteria sampling requirements is to provide data to inform future review on grazing allotments and potentially support future enrollment and coverage of those allotments under the Waiver.

104. **Comment:** "The E. coli monitoring strategy prescribes sampling before cattle turn out on allotments (May – June) and then sampling after cattle turn out on allotments (July – August). We already know that there is a natural increase in bacteria concentrations as the summer season progresses. This can be attributed to less stream flow and/or warmer summer temperatures that encourage the growth of environmental bacteria. Therefore, we already know that this monitoring approach will always show more E. coli after cattle turn out than before merely due to natural seasonal trends. We refer you to Figure 4 of this published USFS water quality study: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0068127>"

Staff Response: *Allotment monitoring plans, required under the draft 2015 USFS MRP (see draft 2015 USFS MRP section V., C), allow for collaboration in the design of sampling plans. Under the MRP, allotment monitoring plans can be tailored to each individual grazing allotment. Studies indicate that increase in pathogen indicator bacteria attributable to livestock grazing are orders of magnitude greater than natural seasonal trends and levels. Additionally, the USFS could conduct the same type of monitoring on vacant allotments to help determine the magnitude of seasonal trends.*

105. **Comment:** "The proposed MRP also includes language about sampling where cattle are present. Sampling sites should be placed in selected and fixed locations rather than moving them around where cows may be present at any moment in time."

Staff Response: *Section V of the draft 2015 USFS MRP contains language to ensure that sampling sites will be placed at key grazing areas where cattle are present. Sampling sites will not be located in places on allotments that are not utilized by cattle and therefore would not provide useful data. Allotment monitoring plans require that the USFS will sample the same key grazing area before cattle are turned out for the season and again at the same site when cattle are present.*

106. **Comment:** “It is problematic that the vegetation monitoring in the proposed MRP does not build upon the long-term meadow health monitoring or the annual use monitoring that USFS is already conducting.”

Staff Response: *The draft 2015 USFS MRP includes language that incorporates existing USFS grazing allotment monitoring protocols, and requires that USFS grazing allotment monitoring programs shall continue. From section V., D., 1. of the draft 2015 USFS MRP :*

“Monitoring of allotment and trend shall be performed once every five years on selected allotments in key areas to track the ecological trend of upland and meadow vegetation. Inspections shall include monitoring of rooted frequency, riparian greenline width, and streambank stability.”

107. **Comment:** “While our organizations do not feel additional monitoring is necessary, should a monitoring plan be implemented, the Regional Board should integrate its approach with what the USFS is already doing. We would also encourage the Regional Board and USFS to reach out to rangeland experts within the University of California Cooperative Extension system who are already doing extensive work on public lands grazing.

Staff Response: *Comment noted.*

108. **Comment:** “The State Water Resources Control Board (SWRCB) has had a “Biological Objectives” process in development for the past 4 years. It could provide complimentary monitoring information to the USFS monitoring effort and thereby eliminate the need for additional USFS monitoring. As a result of stakeholder concerns, the SWRCB has now revised the entire proposal, calling it an “assessment plan”, not linking it to Basin Plan amendments, and they have eliminated the hard “pass / fail” standards. However, this is a complex proposal still under development and could easily become a complex regulatory process.”

Staff Response: *Comment noted.*

109. **Comment:** “Calforests has proposed an alternative monitoring program. It is a 3-year pilot project (attachment) to focus on private forested lands and will collect a plethora of stream information--including BMI samples. Cooperators include the SWRCB, California Department of Fish and Wildlife, CAL FIRE, Calforests and private timber companies. The costs will be significant, currently estimated at approximately \$8,000 per site. We need agency funding from the SWRCB and from AB 1492’s “Timber Regulation and Forest Restoration Fund” to cover these costs. The ultimate goal is to have a science-based monitoring program that will not be regulatory in nature.”

Staff Response: *AB1492 funds are allocated for timber harvest related activities which is just one of the activities eligible for coverage under the draft 2015 USFS Waiver. AB1492 funds are not available for non-timber activities.*

110. **Comment:** “Finally, the SWRCB in June 2015 published the CA Perennial Streams Assessment

http://www.waterboards.ca.gov/water_issues/programs/swamp/bioassessment/docs/psa_memo_070615.pdf). It indicates “the Sierra Nevada and North Coast have the majority of their stream length in good biological condition. ”The Surface Water Ambient Monitoring Program (SWAMP) provides another source of significant water quality data gathering and analysis at 1,300 sample sites.”

Staff Response: *Comment Noted.*

H. Mendocino County Farm Bureau

111. **Comment:** “General Condition 4 discusses management and maintenance of designated riparian zones and related setback distances for the various categories of watercourses. General Condition 11 states that activities undertaken by contractors or grazing permittees shall minimize erosion and riparian disturbance from activities that have potential to discharge sediment that affect natural shade conditions on watercourses. MCFB would like to remind the Regional Board that there are impacts to riparian areas from wildlife including trail crossings, graze/browse impacts to canopy as well as potential fecal pathogen presence. In certain situations, there are also impacts from human footpath trails or OHV use. These impacts are beyond the control of the contractor or permittee and should be accounted for in analyzing riparian zone conditions”

Staff Response: *Comment noted. Please see response to comment 42 for a description of key grazing areas and grazing allotment monitoring site selection, and response to comment 100 for a discussion of potential human waste discharges. Allotment monitoring plans, as proposed in section V., A., of the draft 2015 USFS MRP, require the USFS to establish monitoring locations in area of high livestock utilization on USFS grazing allotments.*

112. **Comment:** “MCFB requests clarification on what would be considered to be a “significant discharge” so that grazing permittees are not subject to unnecessary enforcement or remediation for minor riparian area disturbances that may or may not be related to livestock. There should also be consistent standards in place to avoid bias is determining what is a “significant discharge”.”

Staff Response: *Addressing riparian zone impacts from grazing involves judgment on the characteristics of the riparian zone (including valley form) and geomorphic processes that are not appropriate to detail in a Waiver. Guidance for the judgment comes from a variety of sources, including, but not limited to, the USFS ACS and Aquatic Management Strategy, professional publications, the USFS WQMP, and the Basin Plan. It is the RWB's intent to work cooperatively with USFS and leases in an adaptive management framework, particularly in the early implementation of Waiver provisions as applied to grazing allotments. Enforcement actions, if any, are taken under the general model of progressive enforcement described in more detail in the 2010 Enforcement Policy.*

113. **Comment:** “MCFB appreciates that General Condition 11 allows for the USFS to maintain exclusive authority to determine whether contractors or grazing permittees are complying with the terms and conditions of the USFS contract or grazing permits. Two distinct relationships should continue to exist: one between the USFS and permittees/contractors, and one between the USFS and the Regional Board.”

Staff Response: *The draft 2015 USFS Waiver does not alter the USFS being the agency managing grazing permits and timber contracts on NFS lands. The RWB has authority to enforce against third-party contractors discharging waste on federal lands; however, the RWB has generally relied on the USFS to ensure that contractors comply with water quality BMPs. This approach has been successful for timber operations. The draft 2015 USFS Waiver does not alter that arrangement. The independent enforceability of the Waiver is necessary to control potential waste discharges from the activities described in Finding 4 of the draft 2015 USFS Waiver. If contractors and permittees follow contract and permit provisions, they will likely be in compliance with the draft 2015 USFS Waiver.*

114. **Comment:** “General Condition 21 states that activities conducted under this Waiver must be in compliance with water quality requirements, the Basin Plan, and amendments thereto. MCFB requests that any amendments to this waiver be provided to the USFS in a timely manner so that permittees and contractors can be made aware of the changes and avoid non-compliance.”

Staff Response: *Comment noted. Any change to the Waiver following initial adoption would require a Board action and be part of a public process, the exception being the Monitoring and Reporting Program which may be modified by the Executive Officer.*

115. **Comment:** “Under General Condition 27, it is appreciated that there is a means for the USFS to be able to work with the Regional Board for modifications to the waiver if the terms of the waiver are excessively constraining to USFS activities.”

Staff Response: *Thank you for your comment on this provision of the draft 2015 USFS Waiver.*

116. **Comment:** “For General Condition 37, it states that corrective actions identified through implementation monitoring in the Monitoring and Reporting Program shall be taken while the project is active, prior to the release of contractors, and prior to the onset of the first wet weather operations period after project initiation. MCFB requests that corrective actions, when identified by the USFS and/or Regional Board, be relayed to the contractor in a timely manner so that corrective actions can be taken and the contracts can be finalized.”

Staff Response: *This is in reference to implementation checklist monitoring conducted by USFS staff. The intent is for USFS staff to conduct this monitoring prior to the release of contractors and inform them of additional work as quickly as possible so it can be completed prior to onset of the winter.*

117. **Comment:** “For Category B condition 3, it is appreciated that the Regional Board understands that it is infeasible or unnecessary to treat all legacy sites in certain

situations. It is a positive sign that the Regional Board is willing to work with the USFS on alternative legacy sediment site treatment plans when applicable.”

Staff Response: *Thank you for your comment on this provision of the draft 2015 USFS Waiver.*

118. **Comment:** “For the development of the forest wide monitoring programs, there are a number of requirements that the Regional Board is requesting that will create a significant financial burden on the USFS to implement. The impacts will incrementally increase based on the size of the USFS property, current uses of the USFS property, staffing availability and annual budget. If components of the initial monitoring program are not feasible for a USFS property to implement based on staffing and finances, there should be a process for a modified monitoring program to be established with the Regional Board. The USFS is already in compliance with the Clean Water Act and Porter- Cologne regulations via existing Forest Plans and project-specific terms and conditions. Therefore each provision of a proposed waiver should be assessed for its cost to the USFS.”

Staff Response: *See response to comment 103.*

119. **Comment:** “The description of the forest wide in-channel monitoring network discusses the fact that monitoring reference sites may be sourced from areas outside a particular National Forest such as a county, state or national park, or an adjacent National Forest if sufficient monitoring locations cannot be identified within a National Forest. MCFB does not want to see outside monitoring reference sites selected that are not truly applicable to the specific National Forest in question and requests that clarification be made to limit the distance an outside monitoring reference site can be located from a National Forest.”

Staff Response: *The intent of the language referenced by the MCFB in section I of the draft 2015 USFS MRP is to allow the USFS the flexibility to compare in-channel monitoring data collected on a particular National Forest with reference sites located outside of that National Forest. RWB staff acknowledge that the geomorphic and geologic variability of NFS lands in the North Coast Region, and the relative scarcity of true reference sites (see Ode, 2009 referenced in the draft 2015 USFS MRP for reference site selection criteria), creates a challenge to implement a true paired watershed approach on each of the National Forests in the North Coast Region. As a result, the draft 2015 USFS MRP provides more flexibility in choosing reference sites to compare in-channel monitoring locations in managed areas of the National Forest System to true reference conditions.*

120. **Comment:** “Specific to the grazing allotment monitoring program, MCFB is concerned about how the new monitoring requirements could unjustly impact grazing permit holders.”

Staff Response: *Comment noted.*

121. **Comment:** “It is requested that there be a clear definition of what is considered to be a wetland or a wet area. One of the key grazing management tools for improved

livestock distribution is water source development. These water sources are also critical for wildlife. Often “wet areas” develop from overflow related to water troughs or spring boxes when the demand on the water source is not present or if there is a seasonal increase in water flow. These wet areas should not be subjected to extensive monitoring or regulation.”

Staff Response: *One of the reasons for introducing the allotment monitoring plans requirements contained in section V of the draft 2015 USFS MRP is to address potential impacts to riparian zones, including stream channels and wetlands/wet areas. The intent of this section is not to focus on developed water sources that are located outside of designated riparian zones and do not pose a threat of discharge of waste to waters of the state.*

122. **Comment:** “MCFB is concerned that the monitoring program as described will provide false indicators of livestock impacts to water sources. The timing of the sampling for pathogen indicator bacteria before, during and after livestock grazing is problematic. Most grazing permits have turn out dates for livestock that occur in early summer and last through early fall. This time frame typically corresponds with reduced water availability in tributaries and higher ambient temperatures. Since the pre-grazing and during grazing sampling locations shall be the same sampling site, within key grazing areas with flowing water in order to detect background conditions and potential impacts to water quality from livestock grazing, the quantity of water in the system will directly impact the concentration of pathogen indicator bacteria that are present. Low flows and higher temperatures will support a natural increase in bacteria presence, so this monitoring approach will automatically show an increase in e.coli indicator bacteria after livestock are turned out on the allotment than before.”

Staff Response: *See response to comment 104.*

123. **Comment:** “The monitoring program also requires that water samples for pathogen indicator bacteria be taken during annual grazing operations when and where livestock are present. For consistency, the sample site locations need to be fixed and not moved around the allotment in order to sample where livestock may be present.”

Staff Response: *See response to comment 107.*

124. **Comment:** “In terms of alternative monitoring strategies, MCFB would like to propose that the Regional Board consult with Dr. Ken Tate, Professor and Cooperative Extension Specialist at U.C. Davis, regarding alternate methodologies for assessing water quality conditions related to livestock grazing on National Forest Lands. Dr. Tate has performed recent research related to this topic including, Water Quality Conditions Associated with Cattle Grazing and Recreation on National Forest Lands (<http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0068127>) and would be a beneficial resource for the Regional Board on this topic.”

Staff Response: *Comment noted.*

125. **Comment:** “Draft allotment monitoring plans are required to be submitted to Regional Water Board staff by March 1 each year for review and approval. MCFB requests clarification on what the turnaround time is expected to be for the Regional Board to review and approve the grazing allotment monitoring plans. Approval should be performed in a timely manner so that the ability of the grazing permittee to turn out stock on a permit is not postponed due to the Regional Board not approving a monitoring plan.”

Staff Response: *We agree approval should be in a timely manner. We anticipate working with USFS staff on the monitoring plans prior to the March 1 submittal date, resulting in a fairly quick turnaround once we receive the plans.*

126. **Comment:** “For the requirements of the grazing allotment inspections, MCFB feels that the Regional Board needs to consider their regulatory jurisdiction specifically with regard to land use and management practices. The Regional Board can only require a water quality objective, not the management practices by which that objective may be achieved. The USFS has processes in place for assessing grazing allotments and related livestock management practices. The Regional Board, through requesting information on grazing allotment inspections, should not attempt to expand jurisdictional authority over land use and management practices that belong with the USFS.”

Staff Response: *See response to comment 97.*

127. **Comment:** “MCFB appreciates the opportunity to comment on Draft Order No. R1-2015-0021 Waiver of Waste Discharge Requirements For Nonpoint Source Discharges Related to Certain Federal Land Management Activities On National Forest System Lands In the North Coast Region and Related Monitoring and Reporting Program and encourages the Regional Board to consider these comments when moving forward with regulation of activities on USFS lands.”

Staff Response: *Comment noted.*

128. **Comment:** “MCFB supports the ability for grazing permits and other projects already in the NEPA process initiated before October 8, 2015, to adhere to the terms of Order No. R1-2010-0029. This will allow the NEPA process to move forward without having to adhere to new terms within the 2015 waiver which would significantly slow down the NEPA approval process and complicate compliance.”

Staff Response: *Comment noted.*

129. **Comment:** “MCFB requests clarification regarding standards that grazing allotments will need to adhere to. Grazing allotment leases typically renew every ten years, but there are annual meetings to discuss the grazing operation and terms. Will the terms of compliance for R1-2015-0021 be applicable starting for all grazing permits starting in 2016 as part of the annual operating instructions or based on the actual lease renewal date for the allotment if that renewal date falls between October 2015 and October 2020?”

Staff Response: *See response to comment 59. Additionally, 2015 Waiver conditions that apply to grazing allotments generally did not change from the 2010 Waiver and those conditions apply to allotments that undergo reauthorization, NEPA renewal, and received Waiver coverage. The MRP did change with regards to grazing allotments and can apply to any allotment whether or not it is enrolled under the Waiver.*