

USFS Waiver - Questions and Answers

The North Coast Regional Water Quality Control Board (RWB) U.S. Forest Service Liaison Team traveled to Yreka, Eureka, Redding, and Willows during the fall 2010 through early spring 2011 to meet with representatives of the Klamath, Six River, Shasta-Trinity, Modoc, and Mendocino National Forests. The purpose of the meetings was to introduce and discuss RWB's newly adopted Order No. R1-2010-0029, *Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land Management Activities on National Forest Service Lands in the North Coast Region* (2010 Waiver). During these meetings, a list of questions regarding the 2010 Waiver was generated, with a commitment from RWB staff that they would provide responses to these questions. The following questions and responses are organized by topics, citing the relevant section from the 2010 Waiver, questions and comments, and our response. The questions and comments have in some cases been paraphrased and summarized.

1. Waiver Categories A and B

Waiver Citation – Page 18, Waiver Category A, “This category includes activities that as proposed have a low likelihood of impacts to water quality, and as such, require no additional conditions.”

Summary Question – There were a number of inquiries and suggestions about projects that might be added to Category A. Among these projects are commercial firewood collection, commercial Christmas tree harvesting, pile burning outside of riparian areas, road stormproofing, utility corridor work, vault toilets, routine road maintenance, hazard tree removal, and foot trail bridge replacement.

Response – *The USFS Waiver applies to two categories of activities, which are grouped according to level of potential impact to water quality. Activities that have a low potential impact to water quality are eligible for Category A. Category B applies to activities with a moderate potential impact to water quality and requires the USFS provide more information to the RWB. The Waiver states on Page 18 under Waiver Category A, “The USFS may add additional types of activities to this classification, subject to approval by the Regional Water Board Executive Officer.” A number of additions to Category A are being considered since adoption of the 2010 Waiver and include:*

- *installation of vault toilets,*
- *replacement of a foot trail bridge using hand crews,*
- *hand removal of invasive weeds,*
- *pile burning outside riparian reserves.*

Question – Is pile burning Category A or Category B?

Response – *Pile burning is included in Category B of the Waiver (Page 19). However, pile burning outside designated riparian zones may be considered Category A in some cases. Also, pile burning is typically part a bigger project, rather than a stand alone project, and thus often waived under Category B.*

Question – Emergency culvert replacements. Do these need to be in Category B? What if USFS needs to get the road opened fast?

Response – *The Waiver states on Page 12, Condition #39, “Subject to a notification requirement, Water Code section 13269, subdivision (c) allows the Regional Water Board to waive waste discharge requirements for discharges resulting from immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor. These activities and those specific actions necessary to prevent or mitigate an emergency (does not include long-term projects) are exempt from CEQA.” Therefore, this Waiver authorizes emergency culvert replacements even without the Governor declaring a state of emergency, upon notification to the RWB.*

The Waiver also states on Page 12, Condition #41, “This Waiver covers discharges from emergency actions defined in California Code of Regulations, title 14, section 15269. The Waiver requires the USFS to post emergency incidents on its website, and to maintain records for Regional Water Board staff review, as appropriate.”

2. **Application Process**

Waiver Citation – Page 23, Waiver Application for Category B Activities, Condition #3 states, “The Notice of Intent (NOI) and Application shall be filed after project approval by USFS, and at least 30 days prior to anticipated commencement of on-the-ground activities.”

Summary Question – Can we have assurance that a category B project will qualify for waiver coverage prior to the decision notice being issued?

Response – *In most cases, we anticipate being involved in project development and review through scoping, NEPA, and project approval. If all of the conditions of the waiver are met and fully described in prior steps of NEPA, including the listing of all project specific, on-the-ground prescriptions, we can, upon request, send out a letter stating that it appears the project meets the conditions. However, we cannot issue waiver coverage until a decision is made and the forest applies for*

waiver coverage. If we have been involved since project conception, this could go fairly quickly. If we have not been involved, it may take additional time to complete the project review.

3. Watershed Restoration Plans

Waiver Citation – Page 10, finding 29, “Each Forest will provide on an annual basis a list of its watersheds and prioritization for restoration, and detail the progress made in each watershed. Regional Water Board staff will confer with the USFS on legacy site inventories and remediation projects to verify reasonable progress. Successful implementation of watershed restoration plans is required for sediment and temperatures TMDL compliance. If the USFS does not have a Watershed Restoration Plan or an inventory and prioritization of legacy nonpoint sites for the watershed where a site-specific activity to be covered by this Waiver is proposed, USFS must propose treatments of existing legacy nonpoint sources within the project area as a part of the proposed project.”

Questions

- Does this mean that the NEPA document must include road storm proofing and decommissioning in the assessment and decision?
- Is an inventory of road sediment sources adequate, or do we have to have a comprehensive inventory of ALL sites (mines, barrens, etc)? Is there a minimum size that should be inventoried? >10 to 100 cubic yards?

Response – *The USFS Waiver requires that legacy nonpoint source sediment sites must be treated as a part of the project if there is not a Watershed Restoration Plan or an inventory and prioritization of legacy nonpoint sites. Whether this is accomplished as a part of the project assessment and decision or a separate project that goes through NEPA analysis is up to the USFS. It seems that it could be more efficient to use the same NEPA document if possible. The environmental documents and other instruments used to direct activities regarding the treatment of legacy sites must include specific on-the-ground prescriptions that are designed to meet the USFS best management practices.*

Question – Does the inventory of legacy sites include only sediment sources, or must it also include areas with reduced shade?

Response – *The inventory of legacy sediment sites does not need to include those areas with reduced shade. If there are areas with reduced shade that also meet the definition of a legacy sediment site (one that is anthropogenic, is presently – or has the potential to – discharge sediment in amounts that could violate applicable water quality requirements, and can be reasonably and feasibly treated) then they must be included in the inventory.*

Question – Are there criteria for considering a restoration plan complete?

Response – *To comply with the USFS Waiver, a restoration plan is considered complete when legacy site inventory, prioritization, and scheduling has been accomplished.*

Question – Do restoration plans fulfill the need for watershed analysis?

Response – *Watershed analysis goes beyond the legacy sediment site inventories required under the USFS Waiver. The USFS Waiver conditions assure a process for inventorying, prioritizing, and treating legacy sediment sites. Legacy site remediation alone may not meet the USFS needs for restoration planning.*

Question – Do eastside watersheds require restoration plans even in watersheds with no surface flow into the Klamath River?

Response – *If there is surface water present in the watershed, then, yes, a watershed restoration plan must be done. The size and scope of that plan should be commensurate with the scope of the restoration needed.*

Question – How is “successful implementation of watershed restoration plans” defined?

Response - *Successful implementation of watershed restoration plans is addressed on Page 14, condition 2 of the Waiver as, “Sediment delivery sites must be inventoried, prioritized, and scheduled for remediation. There is an expectation that each Forest will make reasonable progress towards completing inventories and remediating legacy nonpoint sites. Timely implementation is necessary for sediment and temperature TMDL compliance.”*

4. **Unauthorized Discharge**

Waiver Citation – Page 18, condition 38 of the USFS Waiver states, “In the event an unauthorized discharge of waste occurs as a result of USFS activities, the USFS shall notify the Regional Water Board Executive Officer within 48 hours of the discovery of the discharge...”

Question – How will USFS staff know if an unauthorized discharge or potential discharge is significant enough to warrant notification of the Regional Water Board and Office of Emergency Services pursuant to the specific waiver conditions that require such notification?

Response – *The USFS conditional waiver contains two conditions regarding the notification of the Executive Officer and/or Regional Water Board of an unauthorized discharge or potential for a significant discharge. Neither require the Office of Emergency Services to be notified. For each, the text from the Order is*

provided with an explanation and examples following. The first is a general condition of the waiver and reads:

“In the event an unauthorized discharge of waste occurs as a result of USFS activities, the USFS shall notify the Regional Water board Executive Officer within 48 hours of the discovery of the discharge, providing a brief description of the nature of the discharge, and impacts from the discharge, and remedial actions taken to abate and clean up the discharge. A written report shall follow within 14 days of the notification of discharge.” (Page 18, condition 38)

The first condition requires the USFS to contact the Regional Water Board Executive Officer within 48 hours of the discovery of an unauthorized discharge. This condition is intended to address discharges of waste from USFS activities that are violating or threatening to violate applicable water quality requirements, or could have a significant effect on public health. An example would be any discharge of sediment resulting from a failed road or stream crossing, landslide, or any other sediment source that violates the Basin Plan. The need to notify the Executive Officer depends on both the amount of the discharge and on the potential for the discharge to have an impact on the beneficial uses of water. There is some discretion intended in the wording of the waiver condition. To some degree, it is up to best professional judgment to determine whether a significant discharge has occurred, or has the potential to occur. It may be better to error on the side of caution and notify the Regional Board.

The second condition specifically references grazing activities and is contained in the section of the order that address Category B activities. (Page 21, condition 9)

“The USFS shall report, within 10 days of discovery, to the Regional Water Board, areas within designated riparian zones that are disturbed by grazing that may result in a significant discharge, and any measures taken to prevent, minimize, or mitigate the potential to discharge. Monitoring to verify the effectiveness of the remediation may be required by the Executive Officer.”

This condition differs from the first condition in that it requires notification of the Regional Water Board when there is a potential for a significant discharge, as opposed to after a discharge occurs, and it is specifically related to grazing. There is less urgency in the reporting requirement (10 days vs. 48 hours) since the discharge is only threatened. An example of when notification would be required within 10 days under this provision is when the management practices being implemented on the allotment fail to prevent impacts to the riparian area and water quality to the degree that significant degradation is threatened. This might occur if cows have uncontrolled access to, or are allowed to congregated in, riparian areas for an extended period of time, long enough to cause contamination and significant degradation of the waterbody. Another example could be if the cows have eaten

down existing vegetation and trampled and compacted streambanks to the point where the streambank becomes unstable and there is a significant potential for the bank to fail and discharge sediment. If the discharge has already occurred and is currently adversely impacting the stream, notification is required within 48 hours. If the discharge is only threatened at the time, but is likely to occur during higher flows, the 10 day notification provision would apply. In this case, the USFS should notify the Regional Water Board and take action to minimize the discharge or prevent any future discharge.

Please bear in mind that both of these conditions were intentionally written to cover a range of circumstances. To some degree, it is up to best professional judgment to determine whether a significant discharge has occurred, or has the potential to occur. It is always better to error on the side of caution. Reporting discharges to the Regional Water Board gives us the information we need to respond to public inquiries and determine corrective actions, where necessary. Regional Water Board staff prefer to address existing and threatened discharges cooperatively with the USFS staff as opposed to discovering an ongoing unauthorized discharge during a routine inspection. Promoting communication and cooperation is the primary intent of the discharge notification provisions.

5. Monitoring and Reporting Program

Waiver Citation – Page 18, condition 37 of the USFS Waiver states, “The USFS shall comply with the monitoring and reporting requirements contained in the Monitoring and Reporting Program of this Order.”

Regional Water Board staff note: The Monitoring and Reporting Program (MRP) that was adopted with the Waiver is currently in effect. However, the MRP has been revised with input from Forest staff and will be posted for public comment in November 2011. The revised MRP incorporates monitoring proposals from the Forest based on programs that are already in place or that the Forests are proposing to initiate.

Question – For Category B projects, 100% implementation monitoring is required. Please clarify expectations. For example, are detailed lists or maps of each and every BMP implemented on a project required?

Response – *We assume this question refers to the Implementation Monitoring or “checklist” monitoring. The recently developed Guidance for Checklist Monitoring helps provide clarification. USFS projects can be large, both temporally and spatially. Projects generally have a project planning phase and a project implementation phase that can span several years and multiple areas of operation. It is expected that a high level of individual on-the-ground prescription spot checking (e.g. visiting a subset of waterbarred road segments to verify that waterbars have been installed properly in the project area) will be utilized to verify*

implementation of the prescriptions. In this checklist approach, 100% implementation monitoring means verifying that each type of on-the-ground prescription was implemented (e.g. skid trails were waterbarred to specifications, not that every waterbar was installed). Nonetheless, the person conducting the monitoring certifies that each prescription has been completed adequately.

Question – If we are measuring temperature and not managing within Riparian Reserves, why are we required to measure shade?

Waiver Citation – Page 13, Condition 1, “USFS shall manage and maintain designated riparian zones (as defined in finding 9, see footnote below³) to ensure retention of adequate vegetative cover that results in natural shade conditions within 300 feet slope distance on each side of fish-bearing streams, 150 feet slope distance on each side of perennial streams, and 100 feet slope distance on each side of ephemeral / intermittent streams, or the site potential tree height distance on each side of the stream, whichever is greatest (per NWFP ACS Strategy Objective No. 4). Timely implementation is necessary for sediment and temperature TMDL compliance. Natural shade conditions are defined as the shade on a watercourse that results from the site potential naturally occurring vegetative community and topographic configuration.

Exceptions to this condition will be considered. In order for Regional Water Board staff to determine the adequacy of the justification for an exception, the justification must identify the proposed canopy reduction and expected recovery time, provide an estimate of the pre- and post- project shade or solar impacts, and explain how such an exception will result in a net long-term benefit to water quality and stream temperatures.”

Response – *If the USFS is managing within Riparian Reserves where stream shading could be effected, then pre- and post- project shade measurements are necessary to assess whether shade conditions, which may impact stream temperatures, have been altered. If the USFS is not managing within the Riparian Reserves, then no shade measurements are needed. Canopy and shade measurements may be conducted within or outside of the project area if they are done as part of the SCI inventory. Regional Water Board staff concur with the approach of evaluating stream temperatures in correlation with the site specific riparian conditions regardless of whether or not riparian reserves are being managed.*

Question – What are “non-random ‘nested’ BMPEP evaluations?”

Response – *As part of the project level monitoring, a subset of non-randomly selected sites are proposed to have the BMPEP evaluations conducted. The term “nested” was used as this evaluation is proposed to be done in conjunction with other evaluations. This term was developed by the Forest and clarification of the term, intent, and application is being worked on as part of the MRP revision.*

Question – Is the checklist on page 2, 1.A.1 the same as the Wet Weather Operations checklist?

Response – *The page and section reference to the checklist has changed during the MRP revisions. However, we believe the question is in reference to checklists that will be used as part of the project implementation monitoring. Checklists will be developed on a project by project level and will be specific to each type of Category B project. If a project contains wet weather operations, it is likely that all or portions of existing checklists can be utilized as part of this type of monitoring.*

Comment – The scale of the required monitoring is huge because the Forest Service will have Category B projects in almost every watershed on the Forest (e.g. range, prescribed fire). The Forest proposes the following to reduce the size and cost over the long term:

1. Watersheds may be removed from the long-term sampling rotation if the data shows that in-stream sediment is not increased over reference conditions.
2. New projects would not trigger additional monitoring if the watershed remains under the CWE thresholds defined from the reference data.

Response – *The monitoring requirements are based, in large part, on proposals and programs submitted to the Regional Water Board by the Forest. We are interested in evaluating the results of the currently proposed monitoring efforts and revising them as necessary and warranted in future MRPs.*

Comment – A SCI reach on every 6th field HUC is not feasible at current or predicted future staffing levels.

Response – *This concern was heard at nearly every meeting the Regional Water Board had with the various Forests. As part of the MRP revisions, the scale has been changed to the 5th field based on discussions with the various forests.*

Comment – Location of survey reaches near stream mouths is unlike to detect project level effects.

Response – *The MRP has been revised such that, sampling sites are selected at or near the most downstream end of a project for project level monitoring.*

Comment – Road patrols after storms are impractical given the amount of road miles and the limited number of staff.

Response – *It is our understanding that the USFS already conducts road patrols after major storm events. This is an existing management practice. Regional Water Board staff are aware that the road systems within the National Forests are*

extensive and due to the remoteness are often inaccessible during the winter months. The intent of the road patrols are to evaluate the condition of the reasonably and feasibly accessible roads following large storm events in order to identify problems areas that may respond to erosion control measures, even if the fixes are temporary until a long term fix can be implemented. Evaluating roads following storm events is a necessary and critical component to managing road systems to prevent and minimize controllable sediment discharge sources.

Section 1.A.1.b of the MRP states “National Forests will conduct road patrols to the extent allowed by weather, safety, and road conditions during and after major storms to detect and correct road drainage problems that could affect water quality [emphasis added]. Road patrols will be conducted along National Forest Transportation System (NFTS) roads before and after major storms to prevent and repair damage to roads that may adversely affect water quality. The Regional Hydrologist will develop a template road patrol protocol and each national forest will use the template to develop its road patrol plan. Road patrol plans will describe conditions under which road patrols are appropriate, safety precautions, and monitoring, corrective, and reporting procedures.”

The Forests are encouraged to work with Regional Water Board staff to develop protocols that define where, when, and how road patrols will be implemented.

6. Natural Potential Shade

Waiver Citation – Page 13, Condition 1, “USFS shall manage and maintain designated riparian zones to ensure retention of adequate vegetative cover that results in natural shade conditions within 300 feet slope distance on each side of fish-bearing streams, 150 feet slope distance on each side of perennial streams, and 100 feet slope distance on each side of ephemeral/intermittent streams, or the site potential tree height distance on each side of the stream, whichever is greatest.”

Summary Question – The Forests posed a number of questions related to natural shade conditions, including: whether shade measurements are needed to assess compliance with the shade requirements, and how much shade reduction (from grazing, roads, and hydraulic mined areas, for example) is acceptable.

Response – *The USFS Waiver states, “USFS shall maintain designated riparian zones to maintain adequate vegetative cover that results in natural shade conditions...” under different stream conditions, consistent with the Northwest Forest Plan Aquatic Conservation Strategy Objective No. 4. Further, the Waiver states, “Natural shade conditions are defined as the shade on a watercourse that results from the site potential naturally occurring vegetative community and topographic configuration.” The Monitoring and Reporting Program suggests that measurements of effective shade conditions can be conducted using a Solar*

Pathfinder. There is no Waiver condition however, that specifically requires the quantification of existing or natural shade conditions.

A project description should include a narrative description of the management practices that will be implemented to ensure compliance with natural shade conditions. Exemptions to natural shade conditions must identify the proposed canopy reduction and expected recovery time, provide an estimate of the pre- and post-project shade or solar impacts, and explain how such an exception will result in a net long-term benefit to water quality and stream temperatures. Management actions should prevent shade reductions. Where that is not possible (due to road construction, for example), the actions should minimize shade reductions and adapt practices to move towards prevention.

7. TMDL Compliance

Waiver Citation – Page 16, condition 16 of the USFS Waiver states, “Compliance with all of the conditions of this Waiver, including legacy site inventories and remediation, retention of natural shade within designated riparian zones, and application of on-the-ground prescriptions that meet USFS BMPs for new activities identified in finding 4 performed on USFS land constitutes compliance with sediment and temperature TMDL implementation.”

Question – If all legacy sites have not been treated, but in-stream monitoring shows that beneficial uses are supported, are we in compliance with the TMDLs?

Response – *Not necessarily. Compliance with TMDL implementation is based on compliance with the conditions of the Waiver, and in some instances, specific TMDL Action Plans. If in-stream monitoring shows that beneficial uses are being supported and water quality standards are being met, then this information should be reflected in the prioritization and scheduling of remediation of the legacy sites.*

Question – How is “timely implementation” for sediment and temperature TMDL compliance measured?

Response – *Timely implementation is determined on a forest by forest basis, consistent with the prioritization and scheduling of remediation for sediment delivery sites or other restoration activities. TMDL compliance is a long-term process. The systematic inventory and treatment of legacy sediment sites is a key component of TMDL compliance.*

8. Storm Water Permit

Waiver Citation – Page 16, condition 18 of the USFS Waiver states, “USFS shall obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, 2009-0009-DWQ) for non-timber construction projects on USFS land that disturb one or more acres of soil, or less than one acre but are part of a larger common plan of development that in total disturbs one or more acres.”

Question – Does construction of temporary roads require a storm water permit? Roads longer than about 0.25 miles will have over an acre of disturbance.

Response – *Construction of a temporary road that disturbs more than one acre would require a storm water permit unless it is part of a larger project that is granted coverage under the USFS Waiver. For example, if the temporary road was a part of a fuels reduction project that was granted coverage under the USFS Waiver, a storm water permit would not be required.*

9. Significant Impacts

Waiver Citation – Page 16, condition 14, “Compliance with Waiver conditions will ensure that no significant environmental impact to water quality occurs from an activity covered by this Waiver.”

Question – How is “significance” defined?

Question – Is a project in a watershed over the threshold for the cumulative watershed effects models considered a significant impact?

Response – *Significance is defined according to CEQA and NEPA. A project in a watershed over the threshold for the cumulative watershed effects is not automatically considered a significant impact. However, projects within watersheds over the threshold of concern for cumulative impacts should raise concerns for new project activities not explicitly designed to reduce impacts should be given heightened scrutiny. The Waiver was designed to incorporate existing USFS programs, planning, assessment and restoration to protect and promote recovery of aquatic resources.*

10. Pesticides

Waiver Citation – Page 16, condition 19 of the USFS Waiver states, “The USFS shall notify the Regional Water Board in writing at least 90 days prior to the proposed application of pesticides, unless Regional Water Board staff agrees in writing to a lesser notice. The notification shall include the type of pesticide,

method and area of application, projected date of application, and measures that will be employed to assure compliance with the Basin Plan.”

Question – Which pesticide applications are exempt from the notification requirement?

Response – Page 17, condition 21, “The USFS may submit information on low risk uses or applications of pesticides (e.g. use around buildings/facilities, borax stump treatments for root disease) for consideration by Regional Water Board staff to develop a list of activities exempt from the notification in condition 16.” Pesticide use around buildings/facilities and borax stump treatments for root disease are exempt from the notification requirement.

Question – Is notification of pesticide use by utility company on USFS lands required?

Response – Third parties are included in the Waiver and are responsible for following the Waiver requirements. We expect the USFS is aware of when third parties are applying pesticides on USFS lands and can report the use. If there are low risk pesticide uses conducted by third parties, the Regional Water Board would consider adding them to the list of activities exempt from the notification in condition 19 described above.

11. **Nutrient Discharges from Grazing**

Waiver Citation – Page 22, Category B waiver condition 12, “The Regional Water Board will consider nutrient discharges associated with grazing activities as the allotments come up for renewal according to the schedule in Attachment B.”

Question – What information is needed to assess nutrient discharges associated with grazing? How are nutrient impacts controlled and reported? (KNF)

Response – Nutrient discharges affecting water quality generally occur as a result of uncontrolled access of livestock to surface waters. If livestock are attracted to and stay in riparian areas for too long, there is an increased likelihood for adverse impacts to riparian vegetation, compaction and erosion of stream banks, and nutrient discharges directly to the watercourses. If livestock access to watercourses is controlled by various means, such as range riding to rotating them out of riparian areas, and providing non-riparian water, salt, and forage, potential impacts may be reduced. Basically, the same measures used to prevent over utilization of riparian vegetation and prevent streamside compaction and erosion will control nutrient discharges.

12. Legacy Site Assessment

Waiver Citation – Page 14, condition 2, “The USFS shall actively address legacy or pre-existing discharges and/or threats to water quality. Sediment delivery sites must be inventoried, prioritized, and scheduled for remediation.”

Waiver Citation – Page 23, Category B waiver application item 6, “To be complete, the Waiver Application must contain the following information: ... f. Identification and proposed treatments of existing legacy nonpoint sediment sites if an inventory and prioritization of legacy sites has not been initiated in the project area, as described in the project description, or reference to the legacy site inventory for watersheds with a watershed restoration plan.”

Questions – When referring to inventory of sediment delivery sites/legacy sites, we have the following questions:

- What scale? From teaspoons to entire hillsides?
- All sites, natural and anthropogenic? Bank erosion? Regardless of whether they have any possible treatment options?
- Minimum threshold for counting a sediment source in inventory?

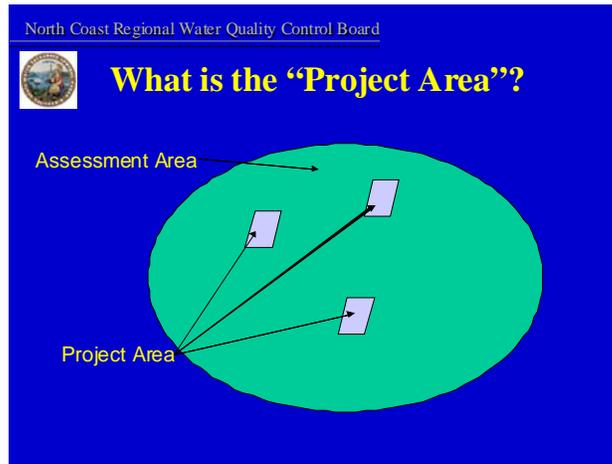
Response – *Legacy sediment discharge sites are those that are anthropogenic, are violating or threatening to violate applicable water quality requirements, and can be reasonably and feasibly treated. For purposes of clarity and project review legacy sediment sites that are not reasonable or feasible to treat should be documented and justification provided as to why treatment is not reasonable or feasible.*

Question – What if we lose all funding and can make no progress on treating legacy sites?

Response – *Staff realize that funding can be uncertain for projects. We are always willing to work with forest staff if funding of projects becomes difficult. Treating legacy sediment sites are a part of achieving compliance with sediment TMDLs. We encourage the USFS to pursue all available means of securing funding to treat sediment sites and achieve sediment TMDL compliance, and incorporate this work into on-going USFS programs.*

Question – How to deal with legacy features in large project areas (e.g. not multi-district). What is the definition of a project?

Response – *The accompanying graphic illustrates the difference between an assessment area and a project area. Often, large-scale projects are just a collection of smaller project areas within a large assessment area. Those legacy sediment sites within the assessment area but outside of the project areas do not need to be included within a project-specific inventory.*



Question – Does this say that we must inventory all existing legacy sites in the project area before we can apply for a waiver?

Response – *There are two ways to address legacy sites. If there is a watershed restoration plan that includes an inventory and prioritization for treatment of legacy sediment sites, then the project is not required to address these sites. However, the project NEPA document does need to reference the location of the inventory within the watershed restoration plan. If there is no watershed restoration plan, or if the existing watershed restoration plan doesn't contain an inventory and prioritization for treatment of legacy sediment sites, an inventory and prioritization must be provided in the environmental documents or as a part of the Waiver application. Only those legacy sediment sites within the project area, not the assessment area, need to be included in the inventory and prioritization.*

Question – Are appurtenant roads considered within the project area and are required to be included in the legacy sediment source inventory, prioritization, and scheduling?

Response – *Regional Board staff strongly encourage the inventory and treatment of legacy sediment sites. Appurtenant roads leading to the project area are not considered to be part of the project area and are therefore not required to be a part of the legacy sediment source inventory, however, roads within the project area should be part of the inventory. Roads outside the project area should however be part of larger watershed based assessment and restoration efforts. Conducting road assessments is encouraged and may facilitate in the road work being accomplished should funding become available.*

Question – Can the USFS trade treatment of legacy sediment sources within the project area with treatment of legacy sediment sources outside of the project area?

Response – *The trading of treating legacy sediment sources inside the project area with treating legacy sediment sources outside of the project area is acceptable as long as the treatment sites are within the same 5th field watershed and it can be demonstrated that the proposed treatment provides an equal or greater benefit to water quality. Such trading will be assessed on a case-by-case basis and should be fully discussed with RWB staff prior to preparing any environmental documents.*

13. **Project-specific BMPs in Contracts, Permits, and Agreements**

Waiver Citation – Page 15, general condition 10, “The USFS shall include within the environmental document prepared pursuant to NEPA, 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. The intent is to provide clarity and transparency in how the BMPs will be met and to facilitate the monitoring of BMP implementation (Monitoring and Reporting Program, part 1).”

Summary Question – What level of specificity is required to meet the condition requiring that specific, on-the-ground prescriptions be included in the project documents?

Response – *The USFS BMPs are typically goal statements and generally do not provide enough specificity for RWB staff to determine compliance with Waiver conditions. The recently developed checklist guidance document developed by Regional Board and USFS staff has been mailed to each Forest and illustrates the level of detail needed to describe on-the-ground prescriptions in BMP implementation monitoring (the checklist).*

A sample checklist follows that is based on an entirely fictional project. The purpose of the sample checklist is to illustrate the level of detail that is needed to make the checklist useful. Only a few BMPs were chosen as examples, but for each individual project, the actual BMPs and on-the-ground prescriptions from the project NEPA document will be used. Additional information that should be included on a real checklist are: location and project information, watershed, date that monitoring occurred, and the name of the person doing the monitoring.

BMP 1.5 – Limiting the Operating Period of Timber Sale Activities

On-the-Ground Prescription	yes	no	n/a
Construction and use of skid trails shall not occur from October 15 th to May 14 th .			
All waterbreaks shall be installed no later than the beginning of the winter period of the current year of operations, and prior to sunset if the National Weather Service forecast is a “chance” (30% or more) of rain within the next 24 hours at any time of year.			
All watercourse crossings and cross drains will be installed and functional prior to October 15.			
Unsurfaced roads are gated and locked prior to the wet weather period.			
Comments/Explain n/a:			

BMP 1.13 – Erosion Prevention and Control Measures during Timber Sale Operations

On-the-Ground Prescription	yes	no	n/a
Erosion control measures and plan have been discussed with O/P			
Wet weather operations are per BMP 1.5			
Final locations of new landings and temporary roads have been reviewed by an earth scientist and identified in the field			
Procedures for field inspections by TSA and USFS earth scientists have been discussed with O/P			
Construction and use of skid trails shall not occur from October 15 th to May 14 th .			
All waterbreaks shall be installed no later than the beginning of the winter period of the current year of operations, and prior to sunset if the National Weather Service forecast is a “chance” (30% or more) of rain within the next 24 hours at any time of year.			
All watercourse crossings and cross drains will be installed and functional prior to October 15.			
Unsurfaced roads are gated and locked prior to the wet weather period.			
Comments/Explain n/a:			

BMP 1.19 – Streamcourse and Aquatic Protection

On-the-Ground Prescription	yes	no	n/a
All service landings are located outside of RRs and are approved in advance by the TSA			
Water drafting sites have measures in place to prevent excess runoff to streams			

Skid trails crossings of stream channels are decommissioned no later than the beginning of the winter period of the current year of operations, and prior to sunset if the National Weather Service forecast is a "chance" (30% or more) of rain within the next 24 hours at any time of year.			
Within riparian reserves, trees directionally felled away from watercourses			
No equipment entry into disturbance exclusion zones in riparian reserves.			
Excess soil and debris removed from watercourse crossings is end-hauled to a stable location.			
Temporary roads are designed for on time summer season use.			
All road construction or reconstruction occurs during the dry season.			
If temporary road construction produces unforeseen seeps (we areas), that segment of road would be rocked.			
Ground based equipment limited to slopes of 35% or less			
Skid roads and trails limited to no more than 15% of the harvest area.			
Comments/Explain n/a:			

BMP 2.7 – Control of Road Drainage

On-the-Ground Prescription	yes	no	n/a
Where a road section which is greater than 100 feet in length crosses slopes greater than 65%, placement of fill is prohibited and placement of sidecast shall be minimized.			
Roads to be used for hauling during the winter period shall be surfaced with rock in depth and quantity sufficient to maintain a stable road surface throughout the period of use.			
Watercourse crossings and associated fills and approaches shall be constructed or maintained to prevent diversion of stream overflow down the road and to minimize fill erosion should the drainage structure become obstructed.			
Drainage ditches shall be maintained to allow free flow of water and minimize soil erosion.			
Waterbreaks shall be constructed immediately upon conclusion of use of tractor roads, roads, layouts, and landings, which do not have permanent and adequate drainage facilities or drainage structures.			
Distances between waterbreaks shall not exceed the following: Estimated Hazard Rating U.S. Equivalent Measure Road or Trail Gradient (in percent) _____ _____ 10 or 11-25 26-50 >50 _____ less			

	Feet	Feet	Feet	Feet			
Extreme	100	75	50	50			
High	150	100	75	50			
Moderate	200	150	100	75			
Low	300	200	150	100			
Comments/Explain n/a:							

14. Burned Area Emergency Response

Waiver Citation

Page 12, finding 41, “This Waiver covers discharges from emergency actions defined in California Code of Regulations, title 14, section 15269. The Waiver requires the USFS to post emergency incidents on its website, and to maintain records for Regional Water Board staff review, as appropriate.”

Page 15, general condition 5, “The USFS shall review its guidance for fire suppression and BAER activities specifically regarding protection of water quality through a statewide process with the water boards, and make such changes as may be necessary to avoid, minimize, and mitigate impacts of those activities to water quality.”

Summary Question – Regarding finding 41, are BAER activities considered emergency actions only if the Governor has declared a state of emergency? Also, fire incidents are not posted on the USFS website although sometimes a media release is issued. Is this finding intended to create a new process? Regarding general condition 5, how will USFS review of BAER activities for water quality impacts occur?

Response – CCR section 15269 includes, “Specific actions necessary to prevent or mitigate an emergency.” Therefore, a governor’s declared state of emergency is not required for BAER activities. Wildfires for the Pacific Southwest region are reported on the incident information system website at www.inciweb.com. This internet posting is sufficient to meet the requirements of posting wildfire emergency incidents and the requirement is not intended to create a new process. Review of fire suppression and BAER activities will occur on a statewide basis as part of periodic updates and reviews of the Water Quality Management Plan. Additionally, we are hopeful this finding will remain in the State Water Board USFS Waiver, and therefore will be addressed at the State level and during our annual meetings.

15. Fuels Reduction Project

Waiver Citation – Page 22, Category B Conditions, “The USFS will collaborate with the Regional Water Board Staff to evaluate research and demonstration activities on fuels reduction projects to ensure plans for those projects include appropriate design features to prevent or limit impacts to water quality and may require:

b. specific environmental triggers or thresholds that must not be exceeded during implementation.”

Question – What thresholds? CWE models?

Response – *This condition is intended to address fuel treatments within Riparian Reserves. Successful treatments can reduce the risk of riparian damage and sediment delivery from a catastrophic wildfire. However, reducing riparian canopy can result in increased stream water temperatures and impacts to beneficial uses. Such a project might contain “research” or “demonstration” components designed to show how different methodologies can be used to remove canopy within Riparian Reserves and not create adverse impacts to water quality. In collaboration with USFS staff we may develop specific environmental triggers or thresholds such as a soil compaction threshold for the use of heavy equipment near streams.*

16. General Waiver Questions

Comment – P. 14, The waiver should clarify ephemeral with scour, not just ephemeral.

Response – *The Standards and Guidelines of the Northwest Forest Plan state under Riparian Reserves, Intermittent Streams, “Intermittent streams are defined as nonpermanent flowing drainage feature having a definable channel and evidence of annual scour or deposition. This includes what are sometimes referred to as ephemeral streams if they meet these two physical criteria.” The Waiver language for intermittent and ephemeral streams is consistent with this definition.*

Comment – Category B, #10 and #4. Please elaborate on “motor vehicles and their use” and “range management activities”.

Response – *An example of a Category B project that would include “range management activities” would be the renewal of a grazing allotments. An example of a Category B project that would include “motor vehicle trails and their use” is referring to OHVs.*

Question – How much precipitation triggers the need for erosion control?
Reference: 30% chance of rain.

Response – *The Waiver states on Page 21, Category B condition #8, 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, prior to sunset if the National Weather Service forecast is a “chance” (30% or more) of rain within the next 24 hours, or at the conclusion of operations, whichever is sooner.” Erosion control must be accomplished in accordance with the Wet Weather Operation Standards developed by each Forest. A forecast 30% chance of precipitation within the next 24 hours does trigger the need for erosion control.*

Question – 404/401 Project. How does the waiver fit in?

Response – *The Waiver states on Page 3, Condition #5, “This Waiver does not apply to waste discharges that require a separate permit from the State or Regional Water Board or other agencies, such as activities that require a Clean Water Act 404/401 permit, a NPDES permit, or a construction stormwater permit.” If a project requires a separate permit (e.g. Clean Water Act 404/401), the USFS should obtain that permit and that activity will not be covered by the Waiver. If a portion of the project requires a separate permit, the USFS should obtain that permit for that portion of the project and the Waiver would provide coverage for the remainder of the project.*

Summary Question – There were a number of inquiries about Waiver coverage for permittees operating on USFS Lands. These questions and comments concerned Special Use Permits, co-op roads, road work, Caltrans sites, and third party Waiver coverage.

Response – *If USFS needs to do NEPA as a part of a project, then coverage can be granted under the USFS Waiver. If NEPA is not required, we will need to discuss the specifics of the project. The Waiver states on Page 15, Condition #11, “In addition to providing specific on-the-ground prescriptions, the USFS shall provide copies of this Waiver to contractors and grazing permittees, and USFS volunteers or any other third parties specified in this Waiver, and notify them of their responsibilities to comply with the Waiver.” The Waiver also states on Page 16, Condition #16, “This Waiver does not authorize the nonpoint discharges by third parties conducting activities on NFS lands under the written authorization of the USFS except as specified in this Waiver.” Projects conducted by permittees under contract to the USFS are required to have Waiver coverage. Waiver coverage is granted under Category A if the activity has a low likelihood of impacts to water quality and under Category B if there is a moderate likelihood of impacts to water quality. Waiver coverage cannot be granted to permittees for projects that may result in impacts to water quality that cannot be mitigated to less-than-significant levels.*

Question – Where do marijuana cleanup efforts fit into waiver coverage? Maybe hand crew/Category A type activity.

Response – *It would depend on the type of marijuana cleanup effort. If the clean-up effort involves treatments that could not be mitigated to less-than-significant levels, then it would not be covered by the Waiver. If the cleanup efforts could have a “low likelihood of impacts to water quality”, then they may be eligible for coverage under Category A of the Waiver.*

Placed on Regional Water Board Website on August 9, 2012.