

Via email: commentletters@waterboards.ca.gov

November 21, 2011
Jeanine Townsend
Clerk to the Board
State Water Resources Control Board
1001 I Street, 24th Floor
Sacramento, California 95814



Re: Comment re: USFS Waiver

Dear Ms. Townsend,

Thank you for the opportunity to comment on the revised draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest Lands in California ("Waiver").

By way of background, I am now retired from a career of 34 years with the U.S. Forest Service ("USFS"). I received a B.S. in forest management from Iowa State University in 1968. My career with USFS involved progressively responsible positions in research and administration in Maine, South Dakota, Colorado, Wyoming, Oregon, and Washington, D.C. From 1977 to 1984, I was Tensleep District Ranger of the Bighorn National Forest in Wyoming. From 1984 to 1989, I was a staff officer on the San Juan National Forest in Colorado. In 1991, I became the Deputy Forest Supervisor of the Siuslaw National Forest in Oregon, became the Acting Forest Supervisor in 1992, and became Forest Supervisor in 1994. I served in that capacity for five years. I then became Deputy Chief of USFS in Washington, D.C. I retired from the agency in 2002.

I have experience in USFS land management, budgetary, and administrative capacities. Although I began my career as a forester, my duties and experiences expanded over time to include many areas of expertise, including program areas such as fire, wildlife management, soils, hydrology, recreation, and administrative areas such as budgets. I have been involved in planning, implementing, and monitoring numerous site-specific projects that include nonpoint sources of water pollution, including logging, livestock grazing, mining, and off-road vehicles. As Forest Supervisor, I was responsible not only for planning, implementing, and completing projects, but also for monitoring the effectiveness of projects, ensuring that mitigations were implemented, and for making necessary adjustments to projects. As Deputy Chief, my responsibilities extended to the full range of agency responsibilities at the program level.

I am aware of and have experienced first-hand that activities on USFS lands such as logging, livestock grazing, and off-road vehicle uses can and sometimes do have significant adverse effects on water quality. In my experience, an important safeguard against nonpoint source pollution from these kinds of activities is to ensure the involvement of qualified state and federal water quality personnel in the planning and implementation of such projects, and their oversight if they continue. Involving water quality experts in USFS land management planning, execution, and mitigation can help ensure appropriate check-and-balances on USFS projects.

I have reviewed the revised Waiver. I note attachment C, the monitoring and reporting program, because monitoring and reporting becomes vitally important in the context of any waiver of procedural requirements that would otherwise help ensure that USFS nonpoint source activities do not cause significant impacts. In my view, the monitoring and reporting program is insufficient

as a means to adequately monitor or respond to potential water quality impacts, in part because it lacks needed specificity as to when USFS will do exactly what.

For example, in the context of monitoring of current management activities (such as, but not limited to, livestock grazing and off-road vehicle uses), I note that the Waiver adopts a “hillslope” geographic scale for programmatic assessment of current projects, which is inappropriate because it does not define the ambiguous term “hillslope.” Further, to protect water quality, effects of actual implementation of projects should be done at the project level, especially given the diversity of project sites on USFS lands in California. It may not be necessary to monitor the effects of every low risk project, but a credible, scientifically sound sampling procedure needs to be specified in lieu of this. Second, the Waiver includes fudge words such as “recommendations for corrective actions” (Att C p.3 at B.1a.1)) that mean in practice that nothing at all may be done to correct adverse impacts. Further, corrective actions may be triggered only when previous BMPs are not “rated as fully effective;” the modifier adds ambiguous and subjective language I would not have accepted as a USFS supervisor, because something is either effective to protect water quality, or not. If not, then the activity (logging, grazing, vehicle use) should be suspended or discontinued at the site until BMPs and corrective actions work.

Moreover, in my view, the Waiver as a whole does not anticipate, account for, or provide an honest assessment of the realities of USFS budgets, funding, personnel and oversight. USFS can (and does) promise many things in the conditions of the Waiver, but it inappropriately does not condition implementation or continuance of USFS projects or activities on USFS budgets and personnel to implement conditions. USFS has a large national budget, as do most national forests in California. There is budgetary discretion, but another reality is that much money is spent on fire suppression or responding to wildland fires, frequently impinging on the agency's ability to follow through on intentions. In contrast, the Waiver does not require that before activities occur on USFS lands in California, the mechanisms necessary to protect water quality from nonpoint sources of pollution are in place and will remain in place, and implemented, throughout the life of the project. This is a significant shortcoming that the Waiver and associated documents do not anticipate or, if they do, they do not address it.

For example, the Waiver fails to provide that if USFS does not or cannot implement fully all BMPs for livestock grazing, then grazing without regional board concurrence shall not occur. This is precisely what has occurred in western rangelands for decades in spite of mountains of evidence on the detrimental effects of grazing on water quality. In this respect the Waiver is merely a set of aspirations. Another example is off-road vehicle uses. There is no doubt that the Forest Service road system in California has deteriorated due to increased use and deferral of maintenance and capital improvement needs, with negative effects on water quality. Exhibits provided by CSERC et al document deferred road maintenance on national forests in California, some in estimates over \$100 million dollars. On the ground, deferred maintenance means culverts are not cleaned out and drainage structures are not maintained. Because much of the USFS road system in California is hydrologically-connected to waters, the combination of increased off-road vehicle use and a lack of maintenance can result in sediment from roads and trails entering streams and rivers. Sedimentation is a significant impact and will remain a significant impact because USFS admits that it lacks funding to manage its roads as the Waiver and associated documents suggests it might. These kinds of impacts should be valued in a robust, public analysis of the impacts of USFS nonpoint source activities to include a reasonable range of alternatives of how to mitigate them.

In my opinion, the revised Wavier should have included conditions that would require the Forest Service to take action – such as stopping an authorized activity --if measurable levels of water

quality and environmental degradation are found to occur in the future. Without such meaningful standards for agency action, and in light of the future constraints on the Forest Service's budget allotted to protecting water quality, the revised Waiver is likely to have significant impacts to water quality.

Thank you again for the opportunity to submit these comments.

Sincerely,

/s/ James R. Furnish
James R. Furnish
Rockville MD