



# Frequently Asked Questions

## **Draft Permit for Nonpoint Source (NPS) Discharges Related to Certain Activities Conducted by the United States Forest Service and the Bureau of Land Management on Federal Lands**

**Revised May 2024**

The California Central Valley Water Quality Control Board (Central Valley Water Board) has developed a draft permit to ensure regulatory compliance and water quality protection for activities undertaken by the United States Forest Service (USFS) and the Bureau of Land Management (BLM) on federal lands. Staff anticipates presenting a proposed permit to the Central Valley Water Board in August 2024 for adoption.

The State Water Resources Control Board and the nine Regional Water Quality Control Boards (collectively Water Boards) are responsible for implementing and ensuring compliance with both the federal and state water quality laws across the state. This regulation ensures pollutants from activities that result in direct discharges to water (surface and ground water) as well as those from more diffuse sources like roads and broader land disturbing activities are minimized to protect water quality. These more diffused pollutant sources are referred to as “nonpoint sources” (NPS) of pollution.

The land management activities conducted by the USFS and BLM that may be regulated under the proposed permit include the following:

- vegetation management (including timber harvesting and fuels management),
- recreational facilities management (including motorized and non-motorized recreation management),
- restoration activities (including watercourse crossing replacements and upgrades),
- post-emergency recovery (including post-fire activities such as suppression repair, hazard tree removal, revegetation and other recovery activities), and
- transportation system management (including road and trail construction, reconstruction and maintenance).

Further information regarding [permit development and a link to sign up for an email list](#) for the project are provided at: ([www.waterboards.ca.gov/federalNPSpermit](http://www.waterboards.ca.gov/federalNPSpermit)).

MARK BRADFORD, CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

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## 1. **What is the Central Valley Regional Water Quality Control Board?**

The State Water Resources Control Board and the nine regional Water Quality Control Boards (together Water Boards) are the agencies responsible for ensuring water quality protection and restoration for current and future generations across all of California. The Central Valley Regional Water Board is the largest of the nine regions stretching from the Oregon border to Bakersfield and is responsible for ensuring water quality protection for waters within the Central Valley region.

## 2. **What is nonpoint source (NPS) pollution?**

Unlike direct discharges of waste from point sources<sup>1</sup> (e.g., a municipal wastewater treatment plant), NPS pollution may originate from multiple diffuse sources — such as roads, agricultural areas, and other managed lands, including forests — and is typically transported by rainfall, snowmelt, and irrigation water to ground or surface waters.

Common sources and contaminants associated with NPS pollution may include, but are not limited to, the following: pathogens (including bacteria and viruses), pesticides, or excess nutrients related to agricultural activities, cattle grazing, or dairies; lawn fertilizers, metals, and petroleum products in storm water runoff; and soil erosion and sediment discharges from land disturbing activities like timber harvesting, vegetation management, construction sites, and unpaved roads. As runoff or snowmelt moves over and through the ground, it can mobilize both natural and human-made pollutants, depositing them into streams, lakes, rivers, wetlands, coastal waters and ground water. Table 1 lists common NPS pollutants, common sources, and some of the potential adverse effects of each.

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<sup>1</sup> The Clean Water Act (CWA) distinguishes between point and nonpoint sources of pollution. Under the CWA, a point source is identified as a discernible, confined, and discrete conveyance, such as a pipe, ditch, or channel. (33 U.S. Code § 1362). Nonpoint pollution sources generally are sources of water pollution that do not meet the definition of a point source as defined by the CWA. (Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (2004), p. 7.) In California's Porter-Cologne Water Quality Control Act, the term "discharge of waste" includes all discharges, from point and nonpoint sources, including wastewater treatment plant outflow, agricultural return flows, and storm water discharges.

**Table 1: Common NPS Pollutants, Sources, and Potential Adverse Effects**

Common NPS pollutants	Contaminants	Common Sources	Potential Adverse Effects
Nutrients	Nitrogen, Phosphorus, Total Dissolved Solids	Agricultural activities, livestock grazing, dairies, urban lawns and golf courses, septic tanks, pet wastes, atmospheric inputs, cannabis cultivation	Eutrophication, hypoxia or reduced dissolved oxygen, increases in cyanobacteria and other algae; ground water contamination
Pathogens	E. Coli, giardia	Livestock grazing, dairies, wildlife, recreation (human and pet waste), septic systems	Human health risk
Sediment	Turbidity, suspended sediment	Agricultural activities, construction sites, unpaved roads and watercourse crossings, timber harvesting, post-wildfire runoff	Increase filtration costs, aquatic species habitat degradation, reduced reservoir capacity, elevated temperature
Temperature	Increased water temperature	Removal of streamside vegetation related to timber harvesting or agricultural activities, urbanization, climate change	Aquatic species habitat degradation, reduced dissolved oxygen, eutrophication, harmful algal blooms
Pesticides	Herbicides, fungicides, rodenticides	Agricultural activities, timber harvesting, urban runoff (lawns or golf courses), cannabis cultivation	Human health risk, toxicity to aquatic life, aquatic species habitat degradation
Hydrocarbons	Petroleum products (oil, gas); Polychlorinated biphenyls	Urban runoff, timber harvesting, recreational vehicles, illegal dumping	Human health risk, toxicity to aquatic life, aquatic habitat degradation
Metals	Aluminum, Arsenic, Copper, Iron, Lead, Mercury, Nickel, Zinc	Abandoned mines, urban runoff, illegal dumping	Human health risk, toxicity to aquatic life, aquatic species habitat degradation

### **3. Is NPS pollution a significant problem?**

NPS pollution is a serious water quality concern. Discharges of polluted runoff from agriculture, urban development, forest management, recreational activities and hydromodification are the leading causes of water pollution in California. NPS pollution currently accounts for more than 75% of the water quality impairments to waterbodies listed pursuant to section 303(d) of the federal Clean Water Act across the nation. Federal and state laws require the Water Boards to address NPS discharges; however, protecting water resources from the impacts of NPS pollution is a complex challenge. NPS pollution can be difficult to control because it comes from multiple sources across the landscape and may vary over time in terms of specific contaminants and concentrations. Addressing NPS pollution-generating activities is typically most successful when effective best management practices (BMPs) are implemented. BMPs can refer to either structural practices, such as on-the-ground treatments to control erosion or sediment transport, or non-structural practices, such as processes for maintenance scheduling.

### **4. Why is sediment considered a pollutant?**

Sediment is considered a pollutant or waste under both federal and state clean water laws. In California, waste includes “sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation.” (Wat. Code, § 13050, subd. (d).) Under federal law, pollutant, in relevant part, means dredged spoil, solid waste, biological materials, rock, sand, and cellar dirt. (40 C.F.R. § 122.2.) Pollution is defined under Water Code section 13050, in part, as an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either A) the waters for beneficial uses, or B) facilities which serve these beneficial uses. Sediment discharged from anthropogenic sources to waters of the state can have a number of negative impacts, including causing death of aquatic species and damage to their habitat, destabilization of stream channels, damage to infrastructure, and increased costs for municipal water treatment plants, maintenance of irrigation systems, and treatment of domestic/drinking water.

### **5. Why is the Central Valley Water Board proposing to issue an NPS permit for activities conducted by the USFS and BLM on federal lands?**

Federal and state laws, including the 2004 State Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program, require the Water Boards to regulate the discharge of NPS pollutants from lands within their jurisdiction. USFS and BLM managed lands comprise almost 11 million acres or approximately 28% of the lands regulated by the Central Valley Water Board. Review of the effectiveness of best management practices deployed by the USFS and BLM and existing conditions on federal lands indicate water quality protection measures are necessary to control nonpoint discharges.

**6. What authority does the Central Valley Water Board have to regulate activities conducted by federal agencies?**

The Water Boards implement both federal and state water quality control laws. Pursuant to federal Clean Water Act section 313, “each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants, and each officer, agent, or employee thereof in the performance of his official duties, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity including the payment of reasonable service charges.” (33 U.S.C. § 1323, subd. (a).) “[F]ederal agencies managing federal lands generally must comply with the water pollution laws and regulations of the relevant State, including the State’s laws concerning discharges from nonpoint sources.” (Central Sierra Environmental Resource Center v. Stanislaus National Forest (9th Cir. 2022) 30 F.4th 929.)

**7. Is the proposed permit in conflict with the Antideficiency Act?**

The proposed permit acknowledges that specific projects or activities that involve the commitment of funds, services, or property are contingent upon the availability of appropriated funds and nothing in the proposed permit should be interpreted to require obligation or payment of funds in violation of the Antideficiency Act. Federal agencies are responsible for ensuring sufficient funds for compliance with applicable pollution control standards are requested in agency budget. (Executive Order No. 12088 (43 FR 47707,47708) (Oct. 13, 1978), Section 1-5 (Funding) [Executive Order 13148 (Apr. 21, 2000) (65 Fed. Reg. 24595) revoked section 1-4 (Pollution control plan) of Executive Order 12088].) Clean Water Act section 313 addresses potential appropriation limitations. In particular, section 313(a) discusses the process for exempting projects from the requirements of section 313. Under this section, no such exemptions shall be granted due to lack of appropriation unless the appropriation was specifically requested as part of the budgetary process and Congress failed to make available such requested appropriation.

**8. How will the Central Valley Water Board comply with CEQA for the proposed permit?**

Adoption of the Federal NPS Permit is considered a project under the California Environmental Quality Act (CEQA) and has been subject to the development of an Environmental Impact Report (EIR). The EIR will evaluate the potential impacts of the implementation of the Federal NPS Permit and will describe the alternatives that were considered. The draft EIR will be circulated for a 45-day public comment period along

with the draft NPS Permit ahead of a public hearing held by the Central Valley Water Board.

**9. Why is the Central Valley Water Board proposing a permit for NPS pollution on federal lands now?**

Federal law requires states to develop and implement plans for addressing NPS pollution (33 U.S. Code Section 1329). The Central Valley Water Board's development and issuance of a permit for activities conducted by the USFS and BLM on federal lands is a necessary part of implementing California's 2004 NPS Policy under this federal provision.

In accordance with the 2004 Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Policy) the State Water Board and Regional Water Boards regulate nonpoint source pollution by issuing either: (1) Waste Discharge Requirements (WDRs or "permits"); (2) Waivers of Waste Discharge Requirements; or (3) Basin Plan Prohibition(s), which are the regulatory tools under California's water pollution control statute (the Porter-Cologne Act). To comply with federal regulations and the state's Porter-Cologne Act, the Water Boards have an overriding obligation to manage NPS pollution in a way that protects water quality in all waters within California.

From 2009 through 2011, the State Water Resources Control Board, at the request of the USFS, led an effort to develop and adopt a statewide permit for USFS projects that addressed NPS pollution. That effort concluded that providing regulatory coverage for such projects would be best handled by the individual regional boards. In 2014, the Central Valley Regional Water Board began assessing the issues and identifying the most appropriate regulatory tools for developing the Federal NPS permit.

For individual project currently, the USFS and BLM must submit a report of waste discharge for the activities listed above, and go through the administrative process to receive individual waste discharge requirements as appropriate. This can be a time and resource intensive process. Development of a single permit for the activities listed above will provide a streamlined path for regulatory coverage and ensure more comprehensive and consistent permitting for the federal agencies across the region.

**10. Will the proposed federal NPS permit require members of the public to obtain additional permits for their activities on USFS and BLM managed lands?**

No additional permits will be needed by members of the public as a requirement of the proposed permit. The proposed permit will apply solely to projects undertaken by the USFS and the BLM. Under the permitting approach being proposed by the Central Valley Water Board, the USFS and BLM would be provided permit coverage for projects complying with permit conditions once adopted. Members of the public, special use permit holders, or grazing permit or lease holders will not be required to enroll in this permit.

## 11. How will the proposed permit affect users of USFS and BLM managed lands?

The proposed permit is unlikely to directly affect most users of USFS- or BLM-managed lands within the Central Valley Water Board region. However, indirect effects may include the following:

- **General Recreation:** Treatment of potential erosion or sediment discharge sites may have a limited indirect effect on persons who use public lands for general recreational purposes (e.g. camping, hiking, fishing).
- **Off Highway Vehicle (OHV) Use:** OHV facilities, open areas, and routes may be upgraded to improve water quality over time as a result of the proposed permit.
- **Persons holding grazing permits and/or leases:** Livestock grazing operations on USFS and BLM managed lands within the Central Valley Water Board's jurisdiction are not proposed to be regulated under the proposed permit.
- **Special use permits:** Persons who are applying for one-time event or special use permits from the USFS or BLM will likely not be affected by the proposed permit. However, the federal agencies may need to implement BMPs and/or conduct monitoring in areas where special use permits for ongoing activities have the potential to impact water quality.
- **Contractors and Volunteers:** Contractors (including licensed timber operators) and volunteers that conduct work on behalf of the USFS and BLM may be required to follow project or site-specific guidance (including implementation and monitoring of BMPs) to ensure activities are protective of water quality.
- **Private Landowners:** Persons with private land within and/or directly adjacent to USFS and BLM managed lands may observe improvements or upgrades to federally managed road systems to improve water quality over time as a condition of the proposed permit.
- **Local Governments/Utilities:** Local government agencies (e.g., County Public Works) and utility companies that manage roadways/corridor rights of way within federally managed lands may be affected by erosion and sediment discharge site treatment activities required by the proposed permit.

## 12. How will the proposed permit result in water quality protection/improvements?

The USFS and BLM manage ~10.9 million acres of public land for multiple uses with limited resources in the Central Valley Water Board region. The proposed permit is expected to require implementation of effective best management practices (BMPs) to protect water quality. BMPs, in this case, are on-the-ground techniques that have been

determined by the best available science to either prevent or significantly reduce the discharge of nonpoint source pollution to surface waters.

The proposed permit will require project-specific conditions and criteria to be met, including implementation and evaluation of BMPs for water quality protection. The proposed permit will also require monitoring and reporting to assess effectiveness of implemented BMPs. Adaptive management based on monitoring outcomes will allow for improvement to implementation strategies and BMPs.

The proposed permit will also establish a regular cycle of watershed assessments conducted by the USFS and the BLM at the HUC 12 level (6<sup>th</sup> level) to identify and treat controllable sediment sources.

### **13. What are the steps in the permit development process?**

The permit development process thus far has included early stakeholder surveys and meetings during 2017 and 2018, evaluation of existing BMP implementation and federal agency processes in 2018 and 2019, tribal outreach and consultation pursuant to the California Environmental Quality Act (CEQA) beginning in 2020, and a public scoping meeting held in April 2021. The Central Valley Water Board prepared a draft permit and draft Environmental Impact Report (EIR) that will be circulated for public comment in spring 2024. After public review of the draft documents, the final proposed permit and EIR will be presented to the Central Valley Water Board at a public meeting to be considered for adoption (currently anticipated to occur in mid- to late 2024). The process will include collaboration and communication with the federal agencies and input from the public throughout the phases of permit development.

[Notification of all public meetings and opportunities for public comment](http://www.waterboards.ca.gov/federalNPSpermit) will be posted to the project webpage at: ([www.waterboards.ca.gov/federalNPSpermit](http://www.waterboards.ca.gov/federalNPSpermit)). If you would like to receive periodic email updates and information related to permit development, please sign up for the email notification service set up for this project (accessible via the above link).

The [Citizens Guide to Working with California Water Boards](https://www.waterboards.ca.gov/publications_forms/publications/general/docs/citizenguide.pdf) also provides a good overview of ways to get involved. This guide can be found at: ([https://www.waterboards.ca.gov/publications\\_forms/publications/general/docs/citizenguide.pdf](https://www.waterboards.ca.gov/publications_forms/publications/general/docs/citizenguide.pdf)).