

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2004-0015

Categorical Waiver
For
Discharges Related to Timber Harvest Activities
On Federal Lands Managed by the
United States Department of Agriculture, Forest Service
in the
North Coast Region

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Board) finds that:

1. California Water Code (CWC) section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the state, other than into a community sewer system, shall file with the appropriate regional board a report of waste discharge (“report of waste discharge” or “ROWD”) containing such information and data as may be required by the Regional Board;
2. CWC section 13269 authorizes the Regional Board to waive the requirement to obtain waste discharge requirements and to submit reports of waste discharge as to a specific type of discharge if the waiver is consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan), is in the public interest and the waiver is conditional.
3. CWC section 13269 provides that any such waiver of waste discharge requirements shall be conditional and may be terminated at any time by the Regional Board;
4. The Regional Board, in accordance with CWC section 13269, waived waste discharge requirements for timber harvest activities in 1987 as set forth in Regional Board Resolution No. 87-113;
5. The Regional Board, in compliance with CWC section 13269, reviewed the previously issued categorical waiver for timber harvest activities (Regional Board Resolution No. 87-113) and adopted Order No. R1-2002-0109 Interim Categorical Waiver for Discharges Related to Timber Operations in the North Coast Region on December 10, 2002. Order No. R1-2002-0109 has sunset and has been replaced with Order No. R1-2003-0116, which was adopted on November 5, 2003. This Order rescinds and replaces the specific sections of Order No. R1-2003-0116 that pertain to the United States Department of Agriculture, Forest Service (USFS).
6. In 1981, the State Water Resources Control Board (State Water Board): (a) certified a plan entitled *Water Quality Management for National Forest System Lands in California* that was developed and submitted by the USFS; (b) designated the USFS as the Water Quality Management Agency (WQMA) for specified activities on National Forest System lands in California that may result in nonpoint source discharges, including timber management, road and building site construction, mining, recreation, vegetative manipulation, fire suppression and fuels management, watershed management and range management; and (c)

executed a Management Agency Agreement (MAA) with the USFS for the purpose of implementing the certified plan and WQMA designation;

7. Pursuant to section 208 of the federal Clean Water Act, the United States Environmental Protection Agency (USEPA) has approved the State Water Board's certification of the USFS's water quality management plan, and the State Water Board's certification of the practices therein as "best management practices" (BMPs);
8. The MAA between the State Water Board and the USFS contemplates that the Regional Water Quality Control Boards will waive issuance of waste discharge requirements for USFS projects that may result in nonpoint source discharges, provided that the USFS designs and implements its projects to fully comply with state water quality standards. This Order applies only to timber harvest activities as defined in section (A), below;
9. This Order shall not create a vested right and all such discharges shall be considered a privilege, as provided for in Water Code 13263;
10. This Order does not apply to discharges requiring an NPDES permit under the Clean Water Act, including, but not limited to, silvicultural point sources as defined in 40 CFR 122.27.
11. Pursuant to CWC section 13269, the waivers of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration; that this action waiving the issuance of waste discharge requirements for certain specific types of discharges (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Regional Board from administering enforcement remedies (including civil penalties) pursuant to the CWC;
12. The Executive Officer or Regional Board shall terminate the applicability of this Order to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could have a significant adverse affect on the quality or beneficial uses of the waters of the state;
13. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
 - a. Municipal and Domestic Supply (MUN)
 - b. Agricultural Supply (AGR)
 - c. Industrial Service Supply (IND)
 - d. Navigation (NAV)
 - e. Water Contact Recreation (REC-1)
 - f. Non-contact Water Recreation (REC-2)
 - g. Cold Freshwater Habitat (COLD)

- h. Wildlife habitat (WILD)
 - i. Rare, Threatened, or Endangered Species (RARE)
 - j. Marine Habitat (MAR)
 - k. Migration of Aquatic Organisms (MIGR)
 - l. Spawning, Reproduction, and/or Early Development (SPWN)
 - m. Shellfish Harvesting (SHELL)
 - n. Estuarine Habitat (EST)
 - o. Aquaculture (AQUA)
14. The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were considered as required by law during the development of these objectives. Compliance with water quality objectives will protect the beneficial uses listed above.
15. The Regional Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code section 21000 et seq.) (CEQA), has conducted an Initial Study in accordance with Title 14, California Code of Regulations, section 15063;
16. The Regional Board staff has prepared a proposed Negative Declaration in accordance with CEQA and the CEQA Guidelines (Title 14, California Code of Regulations, section 15000 et seq.). The Negative Declaration concludes that the waiver of waste discharge requirements for timber harvest activities pursuant to Order No. R1-2004-0015 will not have a significant impact on the environment;
17. Copies of the proposed Negative Declaration were transmitted to all agencies and persons known to be interested in this matter according to the applicable provisions of CEQA;
18. The Regional Board conducted a public hearing on March 24, 2004, in Santa Rosa, California, and considered all evidence concerning this matter and adopted the Negative Declaration, a copy of which is attached hereto, and Order No. R1-2004-0015, Categorical Waiver for Discharges Related to Timber Harvest Activities On Federal Lands Managed by the United States Department of Agriculture, Forest Service in the North Coast Region;
19. The Regional Board, based on the testimony received at the aforementioned hearing, and the Negative Declaration determine that the adoption of the waivers of waste discharge requirements for timber harvest activities in accordance with Order No. R1-2004-0015 will be consistent with the Basin Plan, will be in the public interest, and will not have a significant impact on the environment.
20. The Regional Board, in accordance with the CEQA and State Guidelines, determines that there will be no significant adverse environmental impacts, individually, or cumulatively from this Order provided that there is compliance with its criteria and conditions.

21. As provided by CWC section 13350(a), any person may be liable for civil penalties if that person in violation of an order, intentionally or negligently discharges waste, or causes waste to be deposited where it is discharged, into the waters of the state and creates a condition of pollution or nuisance.
22. Effective January 1, 2004, Water Code section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. This monitoring requirement may be waived for discharges that the Regional Board determines do not pose a significant threat to water quality. Discharges that pose a threat to water quality will be subject to a monitoring program.

THEREFORE IT IS HEREBY ORDERED that sections C., H., and I. of Order No. R1-2003-0116 are rescinded and that:

Subject to the conditions and criteria set forth below, the Regional Board waives the requirements to submit reports of waste discharge and filing fees and the requirement to obtain waste discharge requirements for the categories of waste discharges specified below related to timber harvest activities, except for those activities for which waste discharge requirements are subsequently adopted.

A. Definitions

1. "Timber Harvest Activities" means all activities on timberland relating to timber harvesting, including the cutting or removal or both of timber and other solid wood forest products, including Christmas trees, from timberlands, together with all the work incidental thereto, including, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, stream crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory treemarking, surveying or roadflagging. Also included in this definition are the above activities when performed by the USFS using its own crews, volunteers, inmate crews, etc., and/or service contracts or agreements, without regard to whether timber is to be sold for commercial purposes. It does not include the use of pesticides.
2. "Project" means any timber harvest activities detailed in either a Categorical Exclusion, an Environmental Assessment or an Environmental Impact Statement prepared by the USFS pursuant to the National Environmental Policy Act (NEPA) on federal lands managed by the USFS.
3. "Requirement of an applicable water quality control plan" means a water quality objective, prohibition, Total Maximum Daily Load (TMDL) implementation plan, or other requirement contained in a water quality control plan adopted by the Regional Board and approved by the State Water Board, and plans or policies adopted by the State Water Board that apply to the timber harvest activities. (Excerpts of the currently

applicable requirements are included in Attachment 1 to this Order; Attachment 1 may be revised from time to time.)

4. “Monitoring” refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions, including but not limited to, instream water quality monitoring undertaken in connection with timber harvest activities, monitoring to identify short and long-term trends in water quality, active inspections of timber harvest activities, hillslope implementation and effectiveness monitoring, and project completion inspections for timber harvest activities.
5. All other terms shall have the same definitions as prescribed by the Porter-Cologne Water Quality Control Act, unless specified otherwise.

B. Eligibility Criteria

1. The USFS has conducted a multi-disciplinary review of the proposed Project, including review by watershed specialists, and has included specific BMPs in conformance with the *Water Quality Management Plan for National Forest System Lands in California*, and additional control measures as needed, in the proposed Project.
2. The USFS has conducted a cumulative watershed effects (CWE) analysis of the proposed Project and included specific measures in the proposed Project needed to reduce the potential for CWEs in order to assure compliance with applicable water quality control plans. The scale and intensity of cumulative watershed effects (CWE) analyses will be commensurate with the scale and intensity of the Projects seeking coverage under this waiver. Cumulative watershed effects analyses may range from qualitative reasoning to application and interpretation of quantitative models.
3. The USFS has allowed, as appropriate, the public and other interested parties reasonable opportunity to comment on and/or challenge individual timber harvest proposals.
4. The USFS has conducted an environmental review of the proposed Project pursuant to NEPA on federal lands managed by the USFS.

C. Conditions

1. For all Projects to be covered under this Order, the USFS shall submit to the Regional Board, early in the planning process, a description of the Project. The USFS shall also submit to the Regional Board copies of all draft and final environmental and decision documents prepared pursuant to NEPA, and any other decision documents, that contain information documenting compliance with the eligibility criteria at (B), above, unless Regional Board staff notifies the USFS in writing that such planning documents are not needed for a specific Project. The USFS shall submit to the Regional Board copies of approved Project contracts or agreements when requested in writing.

2. Prior to commencement of timber harvest activities, the USFS shall, in writing, file with the Regional Board a Notice of Intent, in which the USFS certifies they understand and intend to comply with all criteria and conditions of this Order and applicable water quality regulations. The Notice of Intent shall be signed by the Forest Supervisor or their duly authorized USFS representative.
3. The USFS shall submit and comply with a monitoring program prior to commencement of timber harvest activities when: (1) the USFS's cumulative watershed effects analysis indicates that the Project may cause any watershed or sub-watershed to exceed a threshold of concern as determined by various models (i.e., Equivalent Roaded Acres (ERA), Surface Erosion (USLE), Mass Wasting (GEO), etc.); or (2) the cumulative watershed effects analysis indicates that the Project may increase risk values, as determined by various models (Equivalent Roaded Acres (ERA), Surface Erosion (USLE), Mass Wasting (GEO), etc.), in any watershed or subwatershed that already exceeds a threshold of concern prior to project implementation. The Executive Officer retains the discretion to waive this requirement, or to impose monitoring requirements in other situations, as appropriate.
4. The USFS shall submit to the Regional Board, forthwith upon completion of the Project, a final certification signed by the Forest Supervisor or their duly authorized USFS representative, certifying that: (1) the Project was conducted in conformance with all applicable provisions of this Order, including (B)(1-4), above, and (2) discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality control plans.
5. The USFS must comply with all requirements of applicable water quality control plans (as identified in Attachment 1), and as these may be modified from time to time pursuant to amendments to water quality control plans adopted by the Regional Board and approved by the State Water Board, and water quality control plans and policies adopted by the State Water Board.
6. The USFS shall conduct timber harvest activities in accordance with the final environmental document and decision document prepared pursuant to NEPA for Projects on federal lands managed by the USFS.
7. The USFS shall not create a pollution, contamination, or nuisance, as defined by CWC section 13050.
8. Unless otherwise authorized, the USFS shall not discharge any waste not specifically regulated by this Order and shall not cause alteration in stream temperature which exceeds Basin Plan requirements. Wastes specifically regulated under this Order include: earthen materials including soil, silt, sand,

clay, rock; organic materials such as slash, sawdust, or bark that enter or threaten to enter into waters of the state. Examples of wastes not specifically regulated under this Order include: pesticides, petroleum products, hazardous materials, or human wastes.

9. The USFS shall allow Regional Board staff to: (a) enter at any time, with or without advance notice, upon National Forest System lands where timber harvest activities covered under this Order are occurring or have occurred, including any and all outdoor areas in the vicinity of and downstream of timber harvest activities, for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with the eligibility criteria and/or conditions of this Order; and (b) access and copy at reasonable times any self-monitoring records that must be kept as directed by the Executive Officer, and to inspect at reasonable times any equipment used to fulfill monitoring requirements established by the Executive Officer.

Regional Board staff will attempt to contact the USFS with advance notice of any planned entry onto National Forest System lands to inspect USFS timber harvest activities covered by this Order. However, if such advance notice is not successful, immediately upon entering the property, Regional Board staff will attempt to contact persons performing the timber harvest activities or other on-site representative(s) of the USFS in order to provide inspection notification, and to discuss any safety considerations. In seeking coverage under this Order, the USFS provides advance consent for announced or unannounced access by Regional Board staff to outdoor areas as specified above. If any such consent is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section (E) of this Order.

10. The USFS shall file the applicable eligibility document(s) as described herein with the Regional Board.
11. Unless other timeframes are specified in writing by the Executive Officer, discharges associated with timber harvest activities that comply with the eligibility criteria, conditions, and procedures of this Order may commence no sooner than fourteen (14) days after receipt by the Regional Board of the applicable documents as described in section (C)(1)(2)&(3).
12. The USFS shall comply with a monitoring program when directed in writing by the Executive Officer.
13. The USFS shall notify the Regional Board in writing at least 90 days prior to the proposed application of pesticides, unless Regional 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 applicable water quality control plans. Subsequent changes to the proposal must be received by the Regional Board in writing forthwith, and in no event less than fourteen (14) days before the application, unless Regional Board staff agrees in writing to a lesser notice.

14. The USFS shall maintain (a) a water quality program consistent with the Basin Plan, and consistent with the requirements of all other applicable water quality control plans; and (b) a verification system acceptable to the Regional Board, including but not limited to inspection, surveillance, enforcement and monitoring of BMPs and "Total Maximum Daily Load" prescriptions as from time to time adopted by the Regional Board and approved by the State Board.

D. Activities Approved by the USFS Prior to March 24, 2004 and Previously Waived Under Order R1-2003-0116

USFS timber harvest activities that were authorized to proceed prior to the adoption of this Order and previously waived under Order R1-2003-0116, can be covered under this Order if they meet the eligibility criteria, submit the specified eligibility document(s) to the Regional Board, and comply with the conditions, as specified below:

1. Eligibility Criteria:

- a. The Project was previously waiver under Order No. R1-2003-0116.
- b. The USFS has conducted an environmental review of the Project pursuant to NEPA on federal lands managed by the USFS.

2. Conditions:

- a. The USFS shall submit to the Regional Board, forthwith upon completion of the Project, a final certification signed by the Forest Supervisor or their duly authorized USFS representative, certifying that: (1) the Project was conducted in conformance with all provisions of this Order, above, and (2) discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality control plans.
- b. The USFS must comply with all requirements of applicable water quality control plans (as identified in Attachment 1), and as these may be modified from time to time pursuant to amendments to water quality control plans adopted by the Regional Board and approved by the State Water Board, and water quality control plans and policies adopted by the State Water Board.
- c. The USFS shall conduct timber harvest activities in accordance with the final environmental document and decision document prepared pursuant to NEPA for Projects on federal lands managed by the USFS.

- d. The USFS shall not create a pollution, contamination, or nuisance, as defined by CWC section 13050.
- e. Unless otherwise authorized, the USFS shall not discharge any waste not specifically regulated by this Order and shall not cause alteration in stream temperature which exceeds Basin Plan requirements. Wastes specifically regulated under this Order include: earthen materials including soil, silt, sand, clay, rock; organic materials such as slash, sawdust, or bark that enter or threaten to enter into waters of the state. Examples of wastes not specifically regulated under this Order include: pesticides, petroleum products, hazardous materials, or human wastes.
- f. The USFS shall allow Regional Board staff to: (a) enter at any time, with or without advance notice, upon National Forest System lands where timber harvest activities covered under this Order are occurring or have occurred, including any and all outdoor areas in the vicinity of and downstream of timber harvest activities, for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with the eligibility criteria and/or conditions of this Order; and (b) access and copy at reasonable times any self-monitoring records that must be kept as directed by the Executive Officer, and to inspect at reasonable times any equipment used to fulfill monitoring requirements established by the Executive Officer.

Regional Board staff will attempt to contact the USFS with advance notice of any planned entry onto National Forest System lands to inspect USFS timber harvest activities covered by this Order. However, if such advance notice is not successful, immediately upon entering the property, Regional Board staff will attempt to contact persons performing the timber harvest activities or other on-site representative(s) of the USFS in order to provide inspection notification, and to discuss any safety considerations. In seeking coverage under this Order, the USFS provides advance consent for announced or unannounced access by Regional Board staff to outdoor areas as specified above. If any such consent is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section (E) of this Order.

- g. The USFS shall comply with a monitoring program when directed in writing by the Executive Officer.
- h. The USFS shall notify the Regional Board in writing at least 90 days prior to the proposed application of pesticides, unless Regional 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 applicable water quality control plans. Subsequent changes to the proposal must be received by the Regional Board in writing forthwith, and in no event less than fourteen (14) days before the application, unless Regional Board staff agrees in writing to a lesser notice.

- i. The USFS shall maintain (a) a water quality program consistent with the Basin Plan, and consistent with the requirements of all other applicable water quality control plans; and (b) a verification system acceptable to the Regional Board, including but not limited to inspection, surveillance, enforcement and monitoring of BMPs and "Total Maximum Daily Load" prescriptions as from time to time adopted by the Regional Board and approved by the State Board.

E. Termination of Coverage Under Order No. R1-2004-0015

1. The Executive Officer shall terminate the applicability of this Order to specific Projects if the Executive Officer makes any of the following determinations:
 - a. The proposed Project does not comply with the eligibility criteria for this Order;
 - b. The proposed Project is not in compliance with the applicable conditions of this Order;
 - c. The proposed Project is reasonably likely to result in violation of any requirement of an applicable water quality control plan or policy. In making this determination, the Executive Officer shall consider the recommendations of staff that participated in the review of the proposed Project, if any;
 - d. A Project has varied in whole or in any part from the approved environmental and decision documents prepared pursuant to NEPA and/or the approved project contract(s) or agreement(s), unless these changes result in better protection of water quality;
 - e. Where conditions unique to the watershed or watershed segment (including but not limited to cumulative impacts, special hydrographic characteristics, Total Maximum Daily Load standards, or intensified timber harvest activities) warrant further regulation.
2. Upon receipt of notice of termination of applicability of this Order from the Executive Officer, the USFS shall immediately cease all timber harvest activities that may result in discharges to waters of the state, other than activities necessary to control erosion and protect human health and safety. Upon notice of termination, the USFS must file a report of waste discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the state may commence only upon enrollment by the Executive Officer under general waste discharge requirements, the

adoption by the Regional Board of an individual waiver of waste discharge requirements or individual waste discharge requirements in accordance with CWC section 13264(a).

- F. This waiver shall not affect the right of any person to maintain at any time any appropriate action for relief against the USFS or a private party conducting timber operations on federal lands managed by the USFS.
- G. Notwithstanding any other provision of this Order, the burden is on the Discharger to demonstrate that each finding required for coverage under this waiver can be made, and that each and every term, eligibility criteria and condition has been met. Notwithstanding any other provision of this Order, no waiver coverage shall be granted unless each and every term, eligibility criteria and condition is met.
- H. Order No. R1-2004-0015 shall expire five years from the adoption date.

I. **Severability**

The provisions of this Order are severable; and, if any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.

- K. The Regional Board hereby approves the Negative Declaration, adopts Order No. R1-2004-0015 and directs the Executive Officer to file all appropriate notices.

Certification:

I, Catherine Kuhlman, Executive Officer
do hereby certify that the foregoing
is a full, true, and correct copy of
an Order adopted by the California
Regional Water Quality Control Board,
North Coast Region, on March 24, 2004.

Catherine Kuhlman
Executive Officer