

California Regional Water Quality Control Board  
North Coast Region

Order No. R1-2014-0011

Categorical Waiver of Waste Discharge Requirements  
for  
Discharges Related to Timber Harvest Activities  
On Non-Federal Lands in the  
North Coast Region

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

1. California Water Code section 13260 subdivision (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 (ROWD) containing such information and data as may be required.
2. Pursuant to Water Code section 13260, regional boards prescribe waste discharge requirements except when a regional board finds, pursuant to Water Code section 13269 that a waiver of waste discharge requirements (WDRs) for a specific type of discharge is consistent with applicable state or regional water quality control plans and is in the public interest.
3. The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools" (2007 Water Quality Control Plan for the North Coast Region (Basin Plan) 4-33.00).
4. In the North Coast Region, discharges of waste resulting from timber harvest activities that pose a low or insignificant threat to water quality can be regulated by conditional waivers of WDR. Individual or general WDRs are required for discharges of waste from all other timber activities not regulated with a conditional waiver.
5. In addition, the following waste discharge prohibitions from the North Coast Region Basin Plan pertain to timber harvest activities, including; logging, road construction, and associated activities in the North Coast Region:

Prohibition 1: The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

Prohibition 2: The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in

quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

6. On June 24, 2009, the Regional Water Board adopted Order No. R1-2009-0038, Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, which superseded the previous Categorical Waiver (Order No. R1-2004-0016). This Order will supersede Order No. R1-2009-0038. Existing projects that were covered under Order No. R1-2009-0038 shall be covered under this Order. This Categorical Waiver is similar to the existing 2009 waiver but makes minor revisions and is structurally reorganized for clarity and usability.
7. This Categorical Waiver applies to five categories of timber harvest activities as defined in the Forest Practice Rules (FPRs) (Cal. Code Regs., tit. 14, §§ 895-1115.3), and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. Implementation and compliance with the general and specific conditions are expected to reduce the likelihood that timber harvesting projects pose a significant threat to water quality.
8. Pursuant to the Basin Plan, and State Water Resources Control Board (State Water Board) Resolution No. 88-63, "Sources of Drinking Water", 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. Industrial Process Supply (PROC)
  - e. Groundwater Recharge (GWR)
  - f. Freshwater Replenishment (FRSH)
  - g. Navigation (NAV)
  - h. Hydropower Generation (POW)
  - i. Water Contact Recreation (REC-1)
  - j. Non-contact Water Recreation (REC-2)
  - k. Commercial and Sport Fishing (COMM)
  - l. Cold Freshwater Habitat (COLD)
  - m. Warm Freshwater Habitat (WARM)
  - n. Wildlife habitat (WILD)
  - o. Preservation of Areas of Special Biological Significance (BIOL)
  - p. Rare, Threatened, or Endangered Species (RARE)
  - q. Marine Habitat (MAR)
  - r. Migration of Aquatic Organisms (MIGR)
  - s. Spawning, Reproduction, and/or Early Development (SPWN)
  - t. Shellfish Harvesting (SHELL)
  - u. Estuarine Habitat (EST)
  - v. Aquaculture (AQUA)
  - w. Native American Culture (CUL)
  - x. Flood Peak Attenuation/Flood Water Storage (FLD)
  - y. Wetland Habitat (WET)
  - z. Water Quality Enhancement (WQE)
  - aa. Subsistence Fishing (FISH)

The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were evaluated as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Categorical Waiver implement these previously

developed water quality standards, which consist of the beneficial uses enumerated above and the water quality objectives.

9. Beneficial uses associated with anadromous salmonids listed as threatened or endangered under the Federal Endangered Species Act or the California Endangered Species Act, including COLD, RARE, MIGR, and SPWN are considered to be among the most sensitive in the North Coast Region. Degradation of freshwater habitat in waterbodies throughout the North Coast Region due to excess sediment discharge, loss of riparian shade, and stream clearing efforts that removed large wood from streams are significant factors that have contributed to declines in populations of several species of anadromous salmonids during the past half century. Many of these adverse impacts were the result of unregulated timber harvesting and associated activities prior to passage and implementation of the Forest Practice Rules in the mid-1970s.
10. Rules regulating timber operations and current standard management practices have changed significantly since implementation of the FPRs. However, due to the fundamental nature of the interaction between harvesting trees and transporting logs and physical processes in steep and remote watersheds of the North Coast Region, the potential remains for timber operations to result in discharge of sediment in quantities deleterious to watercourses and increases in water temperature from reductions in forest canopy that provides shade to streams.
11. In 1988, the State Water Board: (a) conditionally certified the Water Quality Management Plan for Timber Operations on Nonfederal Lands, which included those California Forest Practice Rules selected as best management practices and the process by which those rules are administered; (b) designated the California Department of Forestry and Fire Protection (CAL FIRE) and the Board of Forestry and Fire Protection (BOF) as joint Water Quality Management Agencies (WQMA); (c) executed a Management Agency Agreement with CAL FIRE and BOF for the purpose of implementing the certified plan and WQMA designations.
12. The Management Agency Agreement between the State Water Board, CAL FIRE and the BOF required a formal review of the FPRs and administering processes no later than six years from the date of certification. To date, the State Water Board, CAL FIRE and the BOF have not completed the review.
13. The USEPA has not approved the State Water Board's certification of the California FPRs and administering processes for regulation of timber harvest activities on nonfederal lands in California. However, the Regional Water Board recognizes that the FPRs include rules for protection of the beneficial uses of water, as well as enhanced protection in watersheds with listed anadromous salmonids. The Categorical Waiver relies to the extent practicable upon the water quality protection provided by the FPRs. One of the stated goals of the FPRs is to implement the Forest Practice Act (Pub. Resources Code §§ 4511 et seq.) in a manner consistent with the Porter-Cologne Water Quality Act (Wat. Code §§ 13000 et seq.) (FPR §896.) The

California Department of Forestry and Fire Protection (CAL FIRE) must disapprove a plan if it is likely to violate the Basin Plan. (FPR §898.2.) The FPRs provide measures designed to prevent sediment discharge. (FPR §§ 914, 934 [harvesting practices and erosion control]; §§ 923, 943 [prescriptions for construction, reconstruction, use, maintenance, and decommissioning of roads and landings]; §§ 916.4, 936.4 [requiring evaluation of sites that could adversely impact beneficial uses of water and treatment of such sites when feasible].) The FPRs also provide measures to limit reductions in riparian shade to protect water temperature. Regional Water Board staff continue to work with the BOF, the government body charged with developing and revising the FPRs, as well as CAL FIRE, timberland owners, and other stakeholders, to identify ways to improve rules for protection of the beneficial uses of water.

14. CAL FIRE is the state agency responsible for overseeing timber harvest activities through implementation of the FPRs. Landowners proposing to harvest timber for commercial purposes are required to have an approved harvest plan, prepared by a Registered Professional Forester (RPF), prior to starting timber harvesting activities. Pursuant to the FPR, the Regional Water Board, California Department of Fish and Wildlife (DFW), California Geological Survey (CGS), and other agencies are also responsible agencies that review harvest plans and provide recommendations to CAL FIRE as part of a "Review Team." As a member of the Review Team, the Regional Water Board reviews proposed harvest plans and has the opportunity to participate in pre-harvest inspections. CAL FIRE's timber harvest plan (THP) approval process is the functional equivalent to the California Environmental Quality Act (CEQA) Environmental Impact Report process. (FPR §896)
15. In 2000, the FPRs were revised to include sections 916.9/936.9 and 923.9/943.9, *Protection and Restoration in Watersheds with Threatened and Impaired Values* and, *Roads and Landings in Watersheds with Threatened and Impaired Values*. These rules, collectively referred to as the Threatened and Impaired (T&I) rules, were based in part on recommendations from a 1999 report by a scientific review panel on FPRs and salmonid habitat as well as on a proposal by staff from the Lahontan, Central Valley, and North Coast Regional Water Boards and the State Water Board. The T&I rules were designed to enhance sediment control, riparian shade canopy retention and recruitment of large wood for protection of listed anadromous salmonids, and apply to THPs approved after July 1, 2000. The T&I rules were revised in 2010 and renamed the Anadromous Salmonid Protection (ASP) Rules. The ASP Rules expanded the geographic extent of where the rules apply to planning watersheds with listed anadromous salmonids as well as planning watersheds immediately upstream and contiguous.
16. The ASP rules modified protection measures for Class I watercourses and created a new category for Class II watercourses, the Class II-L (large), for watercourses that drain an area of 100 acres or more or with an average active channel width at least five feet within 200 feet of the confluence with a Class I watercourse. Shade canopy retention for Class II-L watercourses is similar to Class I; a 30-foot-wide no harvest "core zone" and a 70-foot-wide "inner zone", in which 80% (70% in the Northern Forest District) overstory canopy and the 13 largest conifers per acre must be retained. This protection applies to the total length of the Class II-L or the first 1,000

feet of the Class II-L, measured from its confluence with a Class I watercourse, whichever is less. Class II watercourses that do not meet the definition of a Class II-L are designated as Class II-S (small or standard). Canopy retention on Class II-S watercourses is essentially unchanged from the T&I or standard FPRs (50% total canopy), with the exception of a 15-foot “core zone”, in which no harvesting is allowed.

Minimum retention standards for canopy providing shade on Class I watercourses and the lower 1,000 feet of Class II-L required under the ASP rules are generally protective of shade and water temperatures. While standard Class II watercourse canopy retention required under the FPRs does not in all cases ensure compliance with the Basin Plan temperature objective, Specific Conditions of Categorical Waiver F specifies retention of post-harvest canopy within 200 feet of watercourses that exceed FPR standards.

17. The majority of TMDLs on the North Coast, as well as numerous other studies, have found logging roads, particularly poorly constructed roads and watercourse crossings, to be one of the primary sources of excess sediment discharge and alteration in watershed hydrologic regimes associated with impairment of beneficial uses. On January 1, 2015, new FPRs addressing logging roads are scheduled to take effect. The new “Road Rules” package largely reorganizes existing rules related to logging roads, but includes new requirements designed to reduce the potential for sediment discharge from roads, including hydrologically disconnecting roads from watercourses to the extent feasible and mandatory annual road inspections.
18. The FPRs require RPFs to evaluate THP logging areas for conditions that could adversely impact the beneficial uses of water. The RPF must also provide a description of the management measures that will be implemented to protect and restore the beneficial uses of water to the extent feasible. (FPR §§916.4,936.4) In order to help ensure protection of the beneficial uses of water, in 2004 the Regional Water Board began requiring landowners to develop and submit Erosion Control Plans (ECPs) for THPs to comply with general WDR and waivers of WDRs. ECPs require landowners to prepare and submit to the Regional Water Board an inventory of Controllable Sediment Discharge Sources (CSDS)<sup>1</sup>, a prioritization and implementation schedule for corrective action for each CSDS site based on potential impacts to the beneficial uses of water, and a plan to inspect the logging area after operations to evaluate the effectiveness of corrective action and identify where corrective action was not effective and additional work is needed.
19. Partial harvesting that retains a significant post-harvest component of the forest stand has a lower potential to result in adverse impacts to water quality than more intensive harvesting that removes all or the majority of trees. Tree retention can

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<sup>1</sup> Controllable sediment discharge sources are defined as sites or locations within the logging area that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this WDR;
2. was caused or affected by human activity; and
3. may feasibly and reasonably respond to prevention and minimization management measures.

minimize potential changes in runoff patterns and peak flow that can impact beneficial uses of water. Also, the potential for increased sediment discharge from landslides is reduced by retaining root strength on vulnerable hill slopes. As such, harvesting methods that result in intensive canopy removal are limited under this Categorical Waiver to areas at least 200 feet from a watercourse on slopes less than 65%.

20. Timber harvesting activities such as tree removal, road construction, or use of heavy equipment on landslides, or on those portions of the landscape that are vulnerable to landsliding, can increase rates of sediment delivery from landslides. This increase in the rate of landslide-related sediment delivery can be prevented or minimized by avoiding or minimizing ground disturbance and canopy removal on vulnerable areas, or implementing recommendations made as a result of site characterization by a licensed geologist experienced in slope stability investigations. As such, no timber falling, road construction, or ground based yarding may be conducted under THPs covered by this Categorical Waiver on active landslides and geomorphic features related to landsliding without site characterization and input into Project design by a Professional Geologist.
21. Under Public Resources Code section 4629.6 after July 1, 2013, the Regional Water Board may not collect any fee for activities or costs associated with the review of a project, inspection, oversight of project, or permits necessary for timber operations. Accordingly, no fees are due for enrollment under this Order.
22. Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature (Section 303(d) of the Clean Water Act). Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern. TMDLs quantify the natural and anthropogenic sources causing impairment, assess the loading capacity of the watershed, and allocate the amount of a pollutant that can be discharged in a specific watershed without impairing beneficial uses of water.

In 2004, the Regional Water Board adopted a Sediment TMDL Implementation Policy (Resolution R1-2004-0087), which states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer impaired by sediment.

In January 2012, the Regional Water Board also adopted Resolution R1-2012-0013, Policy Statement for Implementation of the Water Quality Objective for Temperature in the North Coast Region (Policy Statement). In March 2014, the Regional Water Board adopted a basin plan amendment to incorporate the approach articulated in the Policy Statement. The approach encourages combining TMDL requirements with region-wide nonpoint source programs for efficiency and to avoid duplicative regulation. Often, the same management measures can address nonpoint source water quality concerns regardless of whether the waterbody is impaired. Sediment conditions interact with water in many ways that can affect water temperatures.

Therefore, practices implemented to prevent and minimize elevated sediment discharges may also help control elevated water temperatures.

It is anticipated that timber operations on non-federal lands that fully and properly implement FPRs that provide water quality protection, and meet the general and specific conditions of this Categorical Waiver, will contribute to implementation of sediment and temperature TMDLs, with additional protection measures necessary to protect the beneficial uses of water incorporated into THPs for site-specific conditions when recommended by the Regional Water Board.

### **Waiver Categories**

23. This Order sets out general and specific conditions for dischargers to obtain categorical waivers of WDRs for certain timber harvest activities conducted on non-federal lands in the North Coast Region. There are five (5) separate categorical waivers for Projects as described in Findings 24 through 30 below. Each waiver category has a set of eligibility criteria and specific conditions. The first step in seeking coverage under this Order is to determine if a given Project meets the eligibility criteria for one of five categories. For Projects that meet the eligibility criteria for a given categorical waiver, the Landowner must comply with all the specific conditions detailed in that category, as well as the general conditions necessary to obtain and maintain coverage under all waiver categories, starting with submittal of application documents described in Section III for Categorical Waivers C, D, and F.

Findings 24 and 25 describe projects that are eligible for Categorical Waiver A:

24. Categorical Waiver A: FPR section 1052 allows timberland owners to submit a Notice of Emergency Timber Operations for a Fuel Hazard Reduction emergency when specified conditions are substantiated by the consulting forester. Operations conducted pursuant to an emergency must comply with all applicable FPRs. In-lieu practices in riparian zones, exceptions to rules, and alternative practices are not allowed unless necessary to protect public health and safety. Due to the potential harm to public and private resources that could occur if fuel hazard reduction projects are not implemented in a timely manner when necessary, it is in the public interest to waive waste discharge requirements for Emergency Timber Operations.
25. Categorical Waiver A: FPR section 1038 exempts the following timber operations from THP preparation and submission requirements:
- A. Harvesting Christmas trees
  - B. Harvesting dead, dying or diseased trees in amounts less than 10 percent (%) of the average volume per acre

- C. Cutting and removal of trees within 150 feet from an improved or legally permitted structure for the purposes of reducing flammable materials and maintaining a fuel break
- D. Harvesting dead trees that are unmerchantable from substantially damaged timberlands.

Such exemptions include restrictions on use of heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive WDRs for these exemptions.

26. Categorical Waiver B: FPR section 1104.1 exempts three categories of timberland conversion from THP requirements, which when in compliance with all other permitting requirements of the Regional Water Board and other permitting agencies, are not likely to pose a significant threat to water quality. It is appropriate to waive WDRs for the following conversion exemptions:

- A. Conversion of less than three acres in size in one contiguous ownership,
- B. Construction or maintenance of right-of-way by a public agency on its own or other public property,
- C. The clearing of trees from timberland by a private or public utility for construction of gas, water, sewer, oil, electric, and communications rights-of-way, and for maintenance and repair of the utility and right-of-way.

27. Categorical Waiver C: Owners and operators of THPs in watersheds with an approved Sediment TMDL Action Plan must comply with the requirements of those plans. Sediment TMDL Action Plans are designed to restore the impaired beneficial uses of a polluted body of water. The TMDL process provides a quantitative assessment of water quality problems, contributing sources of pollution, and the pollutant load reductions or control actions needed to restore and protect the beneficial uses of an individual waterbody impaired from loading of a particular pollutant. THPs which the Executive Officer of the Regional Water Board has determined to be in compliance with an approved sediment TMDL Action Plan are not expected to pose a significant threat to water quality. Therefore, it is appropriate to waive WDRs for THPs in watersheds with sediment TMDL action plans that meet the conditions of Categorical Waiver C.

28. Categorical Waiver D: Modified THPs, as defined by the Forest Practice Rules, are limited to timberland ownerships of 160 acres or less<sup>2</sup>. The Forest Practice Rules for

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<sup>2</sup> The Board of Forestry recently revised rules for Modified, which will take effect January 1, 2015 THPs, increasing the maximum size of modified THPs to 160 acres.

modified THPs include restrictions on intensive silvicultural prescriptions, heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are equivalent to the eligibility criteria for THPs as set forth in Categorical Waiver D, and are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive WDRs for modified THPs meeting Categorical Waiver D conditions.

29. Categorical Waiver E: Categorical Waiver E applied to Non-Industrial Timber Management Plans (NTMPs). However, on May 2, 2013, the Regional Water Board approved Order No. R1-2013-0005, General Waste Discharge Requirements for Discharges for Timber Operations on Non-Industrial Timber Management Plans (NTMPs) in the North Coast Region (General NTMP WDR), which superseded Categorical Waiver E. Beginning May 2, 2013, NTMPs were no longer eligible for coverage under the Categorical Waiver E (Orders R1-2004-0016 or R1-2009-0038).
30. Categorical Waiver F: The General and Specific Conditions of this Categorical Waiver limit the scope of impacts from THPs approved by CAL FIRE and other CEQA compliant timber harvesting activities so that the threatened discharges of waste will be minimized. Further, Regional Water Board staff participation in the CEQA functional equivalent THP review process ensures site-specific mitigation and appropriate project planning to protect water quality. As such, projects that meet the eligibility criteria for Category F are not expected to pose a significant threat to water quality, and therefore, it is appropriate to conditionally waive WDRs.
31. 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 Water Board determines do not pose a significant threat to water quality. The categorical waivers set out herein are for projects that do not pose a significant threat to water quality. Any project covered hereby that warrants it and meets the criteria of Water Code section 13267 subdivision (b), however, will be subject to a monitoring program as directed by the Executive Officer.

### **Miscellaneous**

32. Pursuant to Water Code section 13269, the waivers of WDRs for the categories of waste specified herein shall not exceed five years in duration; this action waiving the issuance of WDRs 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 Water Board from administering enforcement remedies (including civil penalties) pursuant to the Water Code and other applicable law.
33. The Executive Officer or Regional Water 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 affect the quality or beneficial uses of the waters of the state.

34. This Order establishing a group of categorical waivers shall not create a vested right, and all discharges covered by it shall be considered a privilege, not a right, as provided under Water Code section 13263.
35. State Water Board Resolution No. 68-16 ("Statement of Policy with Respect to Maintenance of High Quality Waters in California") establishes that whenever the existing quality of water is better than the quality established in state policies, including the Basin Plan, such existing high quality water must be maintained to the maximum extent possible consistent with the maximum benefit to the people of the state. Any change to existing high quality waters is allowed only if it has been demonstrated to the Regional Water Board that: 1) any change will be consistent with maximum benefit to the people of the state; 2) will not unreasonably affect present and anticipated beneficial uses of such water; and 3) will not result in water quality less than that prescribed in the Basin Plan. The policy further requires that dischargers meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the state will be maintained.

This Categorical Waiver is consistent with Resolution No. 68-16. It sets forth conditions and measures designed to prevent sediment discharge to waters of the state to the extent feasible. When implemented properly, these conditions and measures will result in a benefit to water quality. The activities permitted under this Order accommodate important economic and social considerations and have been determined to have a low potential impact to water quality when conducted pursuant to the terms of the Order. Compliance with this Order will lead to attainment of applicable water quality requirements and the reasonable protection of beneficial uses. The implementation of all cost-effective and reasonable management measures to prevent or minimize sediment discharge, and the monitoring of the effectiveness of the measures to identify and correct sites where such management measures are not functioning as intended, will result in the best practicable treatment or control of the discharge, will assure that pollution or nuisance will not occur and the highest water quality consistent with maximum benefit to the people of the state is maintained.

36. In accordance with the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.) (CEQA), the adoption of this Categorical Waiver is a "project" and the Regional Water Board is the lead agency responsible for approving the project. The Regional Water Board conducted a CEQA analysis and adopted a mitigated negative declaration that accompanied Order R1-2009-0038 in 2009 (State Clearinghouse No. 2009042053). Compliance with this Order does not result in any significant physical changes in the environment, or imposition of mitigation measures considerably different from what was described and analyzed in the mitigated negative declaration prepared in 2009. As such, this Order is consistent with the prior CEQA documentation as no new impacts that were not previously analyzed are expected to occur. The Regional Water Board will file a notice of determination in

accordance with title 14, California Code of Regulations, section 15075 within five (5) days of the adoption of this Order.

37. The Regional Water Board has reviewed the contents of this Order, public comments, and testimony provided after notice and hearing. This Order implements the Basin Plan and requires dischargers to comply with applicable conditions and prohibitions contained therein.
38. This Order supersedes Order No. R1-2009-0038. With the exception of NTMPs, projects that were previously waived under Order No. R1-2009-0038 are covered under this Order provided they meet the applicable General and Specific Conditions of that Order (R1-2009-0038). NTMP landowners must seek coverage for NTMPs under Order No. R1-2013-0005. No application is required for Projects that were previously waived under Order No. R1-2009-0038.

IT IS HEREBY ORDERED that pursuant to Water Code section 13269, the Regional Water Board hereby approves and adopts Order No. R1-2014-0011 to establish a categorical waiver of waste discharge requirements for discharges of waste from timber harvest activities on non-federal lands in the North Coast Region.

IT ALSO IS HEREBY ORDERED that this Order supersedes Order No. R1-2009-0038. With the exception of NTMPs, projects that were previously waived under Order No. R1-2009-0038 are covered under this Order provided they meet the applicable General and Specific Conditions of Order No. R1-2009-0038.

All dischargers subject to a categorical waiver of waste discharger requirements under this Order shall comply with the following:

**SECTION I: General Conditions that apply to all Categorical Waivers:**

1. The landowner shall comply with all applicable requirements and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board.
2. The Discharger shall allow Regional Water Board staff entry onto the affected property for the purposes of observing, inspecting, photographing, videotaping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section IV.
3. The landowner shall conduct timber harvest activities and erosion control maintenance in compliance with the FPRs. In addition, FPRs and THP conditions (including but not limited to, FPR sections 896, 898, 914 (934), 916 (936), 923 (943) and mitigation measures identified and required by CAL FIRE) that are

intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.

4. The landowner shall comply with all mitigation measures identified in any accompanying CEQA document designed to implement water quality standards. CEQA mitigation measures that are intended to protect water quality shall constitute enforceable conditions under this Order.
5. To be eligible to enroll in the Categorical Waiver, site specific recommendations to comply with water quality requirements that are proposed by Regional Water Board staff during the CAL FIRE THP review and approval process shall be incorporated into the THP prior to the Director's Determination. (FPR §1037.4.) If necessary, disputes shall be raised through Regional Water Board staff management up to the Regional Water Board Executive Officer for resolution. The Executive Officer's decision can be appealed to the Regional Water Board.
6. The landowner must resolve any Non-Concurrence filed by Regional Water Board staff with CAL FIRE to the satisfaction of the Regional Water Board staff prior to enrollment in the Categorical Waiver.
7. All amendments of THPs approved by CAL FIRE shall conform to the Eligibility Criteria and Conditions set forth for the originally waived Project. Failure to do so is a violation of the Categorical Waiver and subjects the Discharger to enforcement action and/or termination of waiver coverage for the project.

## **SECTION II: Categorical Waivers:**

### **Categorical Waiver A: Emergency and Exemptions**

#### Eligibility Criteria:

1. Projects that conform to the rules for Emergency Notice pursuant to FPRs (Cal. Code Regs., tit. 14, §1052) administered by CAL FIRE.
2. CAL FIRE has accepted the Discharger's Emergency Notice for the Project and either: a) the Regional Water Board has received a copy of the notice of acceptance from CAL FIRE; or b) 5 working days, or 15 days for a fuel hazard emergency, have passed since submission of the Emergency Notice to CAL FIRE and the Emergency Notice was not returned to the submitter.

Or,

#### Eligibility Criteria:

1. Projects that conform to the rules for Exemptions pursuant to FPRs (Cal. Code Regs., tit. 14, §1038) administered by CAL FIRE.

2. CAL FIRE has accepted the Notice of Exemption for the Project.

**Categorical Waiver B: Conversion Exemptions (also known as less than 3-acre conversions)**

Eligibility Criteria:

1. Projects that conform to the rules for Conversion exemptions pursuant to FPRs (Cal. Code Regs., tit. 14, §1104.1) administered by CAL FIRE.
2. The Discharger has submitted a Notice of Conversion exemption for the Project to CAL FIRE that has been accepted, and the Regional Water Board has received a copy of the Notice of Acceptance from CAL FIRE.

Specific Conditions:

1. Enrollment under this categorical waiver does not cover discharges to waters of the United States that may require additional permits from federal and state agencies. If road construction includes new or upgraded watercourse crossings for a development following conversion that impacts waters of the United States, the Discharger must apply for and receive a federal Clean Water Act section 404 dredge and fill permit from the US Army Corps of Engineers and accompanying Clean Water Act section 401 water quality certification from the Regional Water Board.
2. If the less than 3-acre conversion is or will be for the purpose of construction development (for residence or commercial purpose of any type), the Discharger must have submitted a Notice of Intent to comply with the Statewide construction stormwater permit and received an enrollment notice prior to commencement of construction activities. This includes grading and land clearing for any type of construction of 1 acre or greater.

**Categorical Waiver C: Sediment TMDL Action Plan Compliant Timber Harvest Plans**

Eligibility Criteria:

1. The project meets the definition of a THP pursuant to FPRs (Cal. Code Regs., tit. 14, §1032), and has been approved by CAL FIRE.
2. The Executive Officer has determined that the Project is in compliance and fully implements the provisions of an adopted Sediment TMDL Action Plan (e.g. Action Plan for the Garcia River Sediment TMDL). Upon request, the landowner must be able to provide information that supports continued conformance with the approved Sediment TMDL Action Plan to qualify for coverage under Categorical Waiver C.

Specific Conditions: None

### **Categorical Waiver D: Modified Timber Harvest Plans**

Eligibility Criteria:

1. The project meets the definition of a Modified Timber Harvest Plan pursuant to FPRs (Cal. Code Regs., tit. 14, §1051), and has been approved by CAL FIRE.

Specific Conditions: None

### **Categorical Waiver E: Nonindustrial Timber Management Plan (NTMP)**

Categorical Waiver E has been superseded by Order No. R1-2013-0005.

### **Categorical Waiver F: Other Projects (Timber Harvest Plans and Other Timber Harvesting Projects)**

Other Projects include standard THPs, or other timber harvesting activities that Regional Water Board staff have determined are in compliance with CEQA. The following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Any other Project, such as a THP under the FPRs approved by CAL FIRE, or other timber projects that Regional Water Board staff have determined are in compliance with CEQA.

Specific Conditions:

1. The landowner shall prepare and submit an inventory of CSDS within the logging area. The inventory must include a description of each CSDS and corrective actions that can reasonably be expected to prevent or minimize sediment discharge for each site. The description of corrective action shall provide sufficient design and construction specifications, including diagrams, minimum rock size, or performance standards as needed to allow on site personnel to implement corrective measures as intended. Corrective action for CSDS shall be implemented no later than final completion of the Project.

Information presented in the map point table included as Attachment C of this Order to fully and properly comply with FPRs addressing erosion control and prevention or minimization of sediment discharge may satisfy the requirement to prepare and submit an inventory of CSDS.

2. For each year that timber operations are conducted, the landowner shall conduct a site visit to verify that measures necessary to prevent or minimize sediment discharge from all logging roads, landings, and skid trails used for timber operations are fully implemented upon completion of use for the year or by October 15, whichever is earlier. An exception is that drainage facilities and drainage structures

do not need to be constructed on logging roads and landings in use through November 15 of a given year provided that all such drainage facilities and drainage structures are installed prior to the start of rain that generates overland flow.

3. The landowner, RPF, or supervised designee shall conduct an inspection of the THP area including appurtenant roads and drainage facilities at least once annually during the life of the THP and throughout the erosion control maintenance period, preferably after the first complete winter period following completion. The purpose of the inspection shall be to ensure that erosion control measures designed to protect the beneficial uses of water have been implemented and are functioning properly, to identify sites where such measures are not functioning as intended, and implement corrective action as needed to protect the beneficial uses of water. The RPF shall record the information listed below for each inspection, and shall provide the information to the Regional Water Board upon request:
  - A. Name of person conducting the inspection;
  - B. Date of the inspection;
  - C. A brief description of conditions observed
4. Timber operations on active landslides and geomorphic features related to landsliding shall be designed to prevent and minimize sediment discharge related to landsliding. The discharger shall prepare and submit a geologic report prior to conducting any of the following timber operations on active landslides or geomorphic features related to landsliding<sup>3</sup>:
  - A. Timber falling;
  - B. Ground based operations; or
  - C. Road construction or reconstruction.

The report, to be prepared by a licensed California Professional Geologist, shall, at a minimum, be prepared in conformance with California Geologic Survey (formerly the California Department of Conservation Division of Mines and Geology) Note 45. The geologic report shall address the degree to which proposed Project activities on landslides or geomorphic features related to landsliding increases the risk of sediment delivery to watercourses, identifies current condition of down slope waters, estimates the amount of sediment that could be delivered from the slides or unstable areas from Project activities, and identifies and incorporates into the Project recommendations for preventing and minimizing the discharge of sediment from these sites.

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<sup>3</sup> Landslides and geomorphic features related to landsliding are defined by California Geologic Survey formerly (California Department of Conservation Division of Mines and Geology) Note 50. This condition does not apply to dormant deep-seated landslides shown on published geologic maps.

5. No timber harvest activities shall occur within the channel zone of a Class III watercourse except for: use and maintenance of roads, construction and reconstruction of approved watercourse crossings, and to allow for full suspension cable yarding when necessary to transport logs through the channel zone.
6. On those portions of the logging area where slope gradient exceeds 65 percent (%) or within 200 feet slope distance from a watercourse as defined in FPR §895.1, post-harvest stocking shall comply with the uneven-aged stocking requirements of the FPRs or in the case of even-aged harvesting methods shall maintain a canopy closure of at least 65% comprised of commercial species at least 30 feet in height.

Areas in which even-aged harvesting methods maintain post-harvest canopy closure of less than 65 % comprised of commercial species at least 30 feet in height shall not exceed 20 contiguous acres or a cumulative total of 100 acres.

7. Timber harvesting activities within Watercourse and Lake Protection Zones at a minimum shall comply with the ASP rules. Site specific recommendations by Regional Water Board staff intended to protect or restore shade where necessary to meet the Basin Plan temperature objective must be included in the approved THP.
8. Roads shall be hydrologically disconnected from watercourses to the extent feasible and practicable. Hydrologically disconnecting roads consists of minimizing alteration of natural drainage patterns and preventing concentrated storm runoff from discharging into watercourses. Road segments that cannot feasibly be hydrologically disconnected from watercourses shall be treated to prevent and minimize surface erosion. Treatment may include seeding and mulching, rocking, slash packing, or other effective methods proposed by the Discharger.
9. No log hauling, ground based yarding, road construction or road reconstruction shall occur during the winter period (November 15 to April 1). This does not include work necessary to apply or maintain erosion control or sediment control management practices to reduce sediment discharge.

Limited log hauling, ground based yarding, road construction, road reconstruction, or road rocking after November 15<sup>th</sup> of a given year may occur during extended early winter dry periods with written concurrence by Regional Water Board staff.

10. No timber harvest activities shall occur during saturated soil conditions. This does not apply to maintenance of existing roads and watercourse crossings, use of non-mechanized timber falling, fuels treatment such as hand piling and burning, hand fire line construction, or other activities which do not involve the use of heavy equipment or timber hauling.

#### 11. Sediment Prevention Plan

The Discharger shall develop and submit a Sediment Prevention Plan (SPP) when any of the following are contained in the approved THP or other timber project:

- A. Construction of new skid trails on slopes over 40% within 200 feet of a watercourse;
- B. Construction of more than 1,000 feet of new roads;
- C. Heavy equipment use within a Watercourse and Lake Protection Zone (WLPZ), equipment limitation zone, or streamside buffer zone of a watercourse, except for the following situations:
  - i. use of existing roads;
  - ii. reconstruction of watercourse crossings to prevent or minimize sediment discharge or provide fish passage;
  - iii. use of existing bridges and culverts as skid trail crossings and maintenance of associated drainage facilities or structures;
  - iv. upgrading of roads to permanent standards by rocking, paving or other suitable surfacing materials to establish a stable operating surface prior to the start of hauling operations; or
  - v. small habitat restoration projects not to exceed 5 acres in size to assure the maintenance, restoration, enhancement, or protection of habitat for fish pursuant to California Code of Regulations title 14, section 15333.
- D. Ground based heavy equipment operations on slopes exceeding 50%.

An SPP must be designed and implemented to prevent and minimize the discharge of sediment to waters of the State and submitted as part of a Project seeking coverage under the Categorical Waiver. An SPP is intended to prevent and minimize creation of *new* sources of sediment discharge from operations conducted under the current project. The SPP shall be developed by a qualified professional and shall include site-specific measures that can reasonably be expected to prevent and minimize creation of new sediment discharge sources from proposed timber harvest activities.

### **SECTION III: APPLICATION PROCEDURES AND ENROLLMENT REQUIREMENTS FOR CATEGORICAL WAIVERS:**

The first step in seeking coverage is to determine if a given Project meets one of the five waiver categories. If the Project meets the eligibility criteria for a given categorical waiver, the landowner must comply with all the general and specific waiver conditions, starting with submittal of the application documents, as required.

If a Project does not meet the eligibility criteria for one of the categorical waivers, the landowner must seek coverage under general WDRs, individual WDRs, or watershed-wide WDRs.

1. No application is required for projects qualifying for coverage under the categorical waiver set out in Section I, Categorical Waiver A: Emergency and Exemption Projects or Categorical Waiver B: Conversion Exemptions. Such Projects must, however, meet the eligibility criteria and conditions, both general and specific, to obtain and maintain coverage under this Order.
2. To seek coverage for Projects under Categorical Waivers C, D, or F set out in Section II, the landowner must submit to the Regional Water Board a "Certification Notice" (Attachment B) that:
  - A. Is signed by the landowner or their designee proposing the project,
  - B. Identifies the type of categorical waiver requested (Categorical Waiver C: Sediment TMDL Action Plan Compliant THPs; Categorical Waiver D: Modified Timber Harvest Plan Projects, or Categorical Waiver F: Other Projects, THPs),
  - C. Landowners applying for coverage under Categorical Waiver C must, upon request by the Regional Water Board, provide information that supports continued conformance with the approved Sediment TMDL Action Plan to qualify for coverage under Categorical Waiver C.
  - D. Acknowledges that the landowner understands and intends to comply with all water quality requirements and the eligibility criteria and all general and specific conditions identified within the appropriate waiver category.
3. For project proponents applying for coverage under Categorical Waiver C, D, or F, the landowner may commence timber operations upon receipt of written confirmation (e.g. email or other) from the Regional Water Board that the project is covered under the Categorical Waiver.
4. Landowners who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under Water Code sections 13350, 13264 and other applicable law if their Project results in an unauthorized discharge of waste to waters of the state.

#### **SECTION IV: TERMINATION OF COVERAGE:**

1. The Executive Officer shall rescind or deny the applicability of this Order to any individual project or activity if the Executive Officer makes any of the following determinations:
  - A. The Project does not comply with the eligibility criteria for the waiver;
  - B. The Project is not in compliance with the applicable conditions of the waiver;

- C. The Project is reasonably likely to result or has resulted in a violation or exceedence of any water quality requirements;
  - D. The Project has varied in whole or in any part from the approved Project in any way that could adversely affect 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, the extent of timber harvest activities, intensity of ground disturbing activities, large acreage ownership holdings or management plans, rainfall, slopes, soil, effected domestic water supplies, an increased risk of flooding, or proximity to local, State, or National Parks) warrant further regulation;
  - F. Where past land use activities unique to the watershed or watershed segment resulted in the discharge of human-generated sediment in amounts which warrant further regulation; or
  - G. When requested by another state agency, a subdivision of the state (county) or a federal agency, and with concurrence by the Executive Officer.
2. Upon receipt of a written notice of rescission or denial of coverage for a project or activity under this Order, the applicability of this Order to the covered project or activity is immediately terminated. Upon termination, permittees must immediately cease all activities that may result in unauthorized discharges of waste to waters of the state, other than activities necessary to control further discharges. 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 or watershed-wide WDRs, the adoption by the Regional Water Board of an individual waiver of WDRs or individual WDRs, or in accordance with Water Code section 13264 subdivision(a).
  3. The applicability of this Order to a specific project is immediately terminated upon the landowner's receipt of a written notice of rescission or denial of coverage or on the effective date of a different or new categorical waiver of WDRs, an individual waiver of WDRs, individual WDRs, general or watershed WDRs or NPDES permit that covers or permits the specific Project.
  4. Notwithstanding any other provision of this Order, the burden of proof is on the Landowner to demonstrate that each finding required for coverage under this Categorical Waiver can be made, and that each and every term, eligibility criterion, and condition has been met. Notwithstanding any other provision of this Order, no waiver coverage is valid unless each and every term, eligibility criterion, and condition is met.

5. Where WDRs have been issued by the Regional or State Water Board and have not expired, a waiver of that discharge shall not be obtained without a decision by the Regional Water Board following a public hearing. Thus the Categorical Waiver cannot be used to modify any existing order of the Regional Water Board during the life of the permit.
6. 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.
7. Unless terminated or rescinded pursuant to section IV (1) (A-G), projects that receive coverage under Categorical Waiver C, D, or F, shall remain covered under this Order through the effective period of the THP and the erosion control maintenance period. Coverage under this Order shall be considered terminated at the end of the erosion control maintenance period. Prior to final termination of coverage, where timber harvest activities have occurred under a THP, the Landowner/RPF shall ensure the following:
  - A. The project site is stabilized;
  - B. Sites have been treated such that no potential for waste discharges from the Project in violation of the Basin Plan.
  - C. Earthen materials and waste have been disposed of properly.
8. Order No. R1-2014-0011 shall expire five years from the adoption date.
9. Landowners who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under Water Code sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.
10. As provided by Water Code section 13350 subdivision (a), any person may be liable for civil penalties if that person is in violation of a waiver condition, 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.

**SECTION V: PROHIBITIONS:**

1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in

quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

3. The landowner must not cause or threaten to cause pollution, contamination, or nuisance, as defined by Water Code section 13050.
4. This Categorical Waiver does not waive WDRs for other regulatory programs, such as grading and land clearing for any type of construction of 1 acre or more. Such construction requires that the landowner obtain a construction stormwater permit and possibly a federal Clean Water Act section 404 dredge and fill permit with accompanying Clean Water Act section 401 water quality certification if a discharge will occur in waters of the United States.
5. The landowner shall not adversely impact human health or the environment, or the beneficial uses of water set out in the Basin Plan.
6. The landowner and Project shall comply with applicable local, state or federal laws and regulations.

Certification:

I, Matthias St. John, 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 May 8, 2014.

*Original signed by*

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Matthias St. John  
Executive Officer

## Attachment A

### DEFINITIONS

1. "Controllable sediment discharge source" means sites or locations within the Project area that meet all the following conditions:
  1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this Categorical Waiver,
  2. was caused or affected by human activity, and
  3. may feasibly and reasonably respond to prevention and minimization management measures.
2. "Landowner" means the timberland owner and anyone working on behalf of the timberland owner in the conduct of timber harvest activities on non-federal lands.
3. "Minimization" means the discharge or threatened discharge of sediment that cannot be prevented during design and implementation of the Project.
4. "Monitoring" refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions. This includes, but is not limited to, assessment monitoring, trends monitoring, Basin Plan compliance monitoring, forensic monitoring, hillslope and instream effectiveness monitoring, and implementation monitoring.
5. "Prevention" means the Project has been designed with the intent of preventing the discharge or threatened discharge of sediment waste through the use of all feasible and reasonable project design, timing, and sediment control practices.
6. "Project" means any Timber Harvest Plan or, other discretionary permits issued by the California Department of Forestry and Fire Protection (CAL FIRE) to harvest timber, including all amendments thereto that propose a change in timber harvest activities that in any way could adversely affect water quality, or any Notice of Exemption or Notice of Emergency Timber Operation accepted by CAL FIRE, or any other project, as defined by CEQA, that involves timber harvest activities provided that the project complies with CEQA.
7. "Qualified professional" means a person with the appropriate training and/or licensing to prepare an Erosion Control Plan or other technical reports designed to prevent the discharge of waste into waters of the state and conduct site inspections, including but not limited to: Certified Erosion Control Specialists, Registered Professional Foresters, Professional Geologists, Certified Engineering Geologists, and Professional Engineers.
8. "Timber Harvesting Activities" means commercial and non-commercial activities relating to forest management and timberland conversions. These activities include the cutting or removal or both of timber and other solid wood forest products,

excluding Christmas trees, as well as, but not limited to: construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; burned area rehabilitation; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory tree marking, surveying or road flagging.

9. "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, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. 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; heat; petroleum products; and nutrients. Not all wastes are covered by this waiver. Examples of wastes not specifically regulated or waived under this Order include: pesticides, hazardous materials, or human wastes.
10. "Water Quality Requirements" means a water quality objective (narrative or numeric), prohibition, TMDL implementation plan, policy, or other requirement contained in a Water Quality Control Plan (Basin Plan) adopted by the Regional Water Board and approved by the State Water Board, and all other applicable plans or policies adopted by the Regional Water Board or State Water Board, including, but not limited to, State Water Board Resolution No. 68-16, (Statement of Policy with Respect to Maintaining High Quality Waters in California).

Most other terms shall have the same definitions as prescribed by the California Forest Practice Act and Forest Practice Rules in effect as of May 8, 2014, and the Porter-Cologne Water Quality Control Act.