

North Coast Regional Water Quality Control Board

Order No. R1-2020-0021

Short-Term Renewal of Order No. R1-2015-0021

**Waiver of Waste Discharge Requirements
for
Nonpoint Source Discharges
Related to Certain Federal Land Management Activities
on National Forest System Lands
in the North Coast Region**

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

1. On October 8, 2015, the Regional Water Board adopted the *Waiver of Waste Discharge Requirements for Discharges Related to Certain Federal Land Management Activities on National Forest System Lands in the North Coast Region*, Order No. R1-2015-0021 (Federal Waiver). The Federal Waiver, which applies to federal land management activities such as timber harvesting, livestock grazing, vegetation management, road-related work, fire suppression and recovery, restoration, and recreation, will expire on October 8, 2020.
2. The intent of this short-term renewal of the Federal Waiver is to allow continued use of the Federal Waiver while Regional Water Board staff continue to develop a new permit for certain nonpoint source activities on federal lands (Federal Lands Permit). Development of the Federal Lands Permit will include: (1) modifying several procedural and regulatory aspects of the Federal Waiver and its associated monitoring and reporting requirements, (2) improving the current Federal Waiver's application to federal lands that are managed by the Bureau of Land Management (BLM) and National Park Service, and (3) conducting an updated and expanded environmental analysis for compliance with the California Environmental Quality Act (CEQA). A short-term renewal of the Federal Waiver is necessary because the Federal Waiver will expire prior to the completion of a draft Federal Lands Permit and supporting CEQA document.
3. The Regional Water Board first adopted the Federal Waiver in 2005 and staff are currently implementing the third iteration of the permit. Since its adoption, many lessons have been learned as the permit has been implemented. Changes to the environment, an increasing annual fire regime, new state and federal policies, and other factors affect the way in which the Regional Water Board should be regulating federal lands in the North Coast Region.
4. Regional Water Board staff are considering several significant modifications to the Federal Waiver for inclusion in the Federal Lands Permit. The proposed changes are intended to adapt the permit to better accommodate fuels management on federal lands, reduce the threats to communities from catastrophic wildfire, and provide an alternative approach to treat controllable sediment sources. Fifty percent of

California's most destructive wildfires to human life and property occurred from 2015 through 2019¹. These wildfires, exacerbated by high fuel loading and increasing surface temperatures, triggered an urgent need for additional forest management activities to minimize impacts from catastrophic wildfires and climate change, protect communities and infrastructure, and improve forest health and environmental resilience. On May 10, 2018, former California Governor Brown issued Executive Order B-52-18 which set a goal of doubling the amount of annual forest management throughout California from 250,000 acres to 500,000 acres through timber harvest, prescribed burns, and fuels management. The federal government committed to match this goal. Federal land management agencies, such as the United States Forest Service (USFS) and BLM, have identified fuels reduction and community protection projects as their top priorities.

5. Based on Regional Water Board Federal Waiver staff liaisons' experience implementing the Federal Waiver and input received to date from Regional Water Board members, the federal land management agencies, and other interested stakeholders, Regional Water Board staff intend to propose modifications to the Federal Waiver for inclusion in the future Federal Lands Permit. In addition, consistent with Assembly Bill 52 and the State Water Resources Control Board's Tribal Consultation Policy², the Regional Water Board will initiate government-to-government consultations with interested Tribal governments to discuss potential modifications to the Federal Waiver. The modifications currently anticipated include:

- converting from a Waiver of Waste Discharge Requirement to a Waste Discharge Requirement (WDR) permit that is not subject to a five-year limit;
- revising the regulatory approach to livestock grazing so a set of general conditions will apply to livestock grazing activities on federal lands rather than relying on federal grazing permit renewals;
- introducing an option to develop an ownership-wide sediment source treatment plan for legacy sediment sites across an entire National Forest/BLM Field Office/National Park or Monument;
- updating water quality protection measures for fuels management activities;
- better integrating and referencing guidance documents from non-USFS federal agencies, such as the BLM and National Park Service, and clarifying the agency-specific requirements in the Federal Lands Permit; and

¹ Top 20 Most Destructive Wildfires in California History:
https://www.fire.ca.gov/media/5511/top20_destruction.pdf.

² State Water Resources Control Board Tribal Consultation Policy:
https://www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/docs/california_water_board_tribal_consultation_policy.pdf

- revising the in-channel monitoring, legacy sediment site treatment, livestock grazing, and project-level implementation and effectiveness monitoring and reporting requirements.
6. The Federal Waiver relies on a Mitigated Negative Declaration³ prepared by Regional Water Board staff in 2010 that supported the *Waiver of Waste Discharge Requirements For Nonpoint Source Discharges Related to Certain Federal Land Management Activities in the North Coast Region*, Order No. R1-2010-0029 (2010 USFS Waiver). As a result of the significant modifications anticipated for inclusion in the future Federal Lands Permit, as described in Finding 5, Regional Water Board staff determined that a new CEQA document is warranted in support of the Federal Lands Permit. The CEQA document development process will include but is not limited to: a public scoping workshop conducted by Regional Water Board staff; a Draft CEQA document public comment period; California Native American Tribal consultations pursuant to Assembly Bill 52; and other stakeholder engagement. Regional Water Board staff anticipate proposing the Federal Lands Permit and supporting CEQA document to the Regional Water Board for adoption by fall 2022.
 7. A short-term renewal of the Federal Waiver is necessary and appropriate to maintain permit coverage on existing and new eligible projects and to allow additional time for Regional Water Board staff to develop the Federal Lands Permit and its supporting CEQA document. A renewal of the Federal Waiver retains all its provisions, which includes terms, conditions, and the USFS Monitoring and Reporting Program, to protect water quality. In the interim, the Regional Water Board retains all its authorities under the California Water Code to address discharges of waste to waters of the state from certain federal land management activities, including enforcement actions, requesting reports of waste discharge for individual sites, and authority to deny or terminate coverage under the Federal Waiver, as appropriate. For these reasons, a short-term renewal of the Federal Waiver is in the public interest and consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan).
 8. In accordance with CEQA⁴, the renewal of the Federal 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 in 2010 that supported the 2010 USFS Waiver. The Regional Water Board has reviewed and considered the prior environmental documentation described above and finds that none of the conditions described in California Code of Regulations title 14, section 15162 have occurred such that preparation of additional environmental documents is required. Compliance with this Order does not result in any significant physical changes in the environment, or imposition of

³ State Clearinghouse No. 2010042031

⁴ Pub. Resources Code section 21000 et seq.

mitigation measures considerably different from what was described and analyzed in the 2010 Mitigated Negative Declaration. 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 Determination⁵ within five days of the adoption of this Order.

9. The Regional Water Board has notified interested parties of its intent to issue a short-term renewal of the Federal Waiver until adoption of the Federal Lands Permit. The Regional Water Board, in a public meeting on August 20, 2020, heard and considered comments pertaining to this short-term renewal.

IT IS HEREBY ORDERED, that the *Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Federal Land Management Activities on National Forest System Lands in the North Coast Region*, Order No. R1-2015-0021, is renewed to continue coverage of discharges from certain federal land management activities in the interim while replacement WDRs and an updated environmental analysis for conformance with CEQA are developed and adopted.

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 August 20, 2020.

Matthias St. John
Executive Officer

20_0021_Timber_Federal_Waiver

⁵ In accordance with title 14, California Code of Regulations, section 15075