

**Response to Comments
on
Proposed Order No. R1-2024-0002**

**General Waste Discharge Requirements
and General Water Quality Certification for
Rural Road and Watercourse Construction and Reconstruction
in the North Coast Region**

**Prepared by:
North Coast Regional Water Quality Control Board
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Background

The Nonpoint Source and Surface Water Protection Division (NPS Division) of the North Coast Regional Water Quality Control Board (Regional Water Board) has developed a new Rural Roads General Order (RRGO), proposed Order No. R1-2024-0002, that includes a General 401 Water Quality Certification and Waste Discharge Requirements intended to streamline the permitting process for routine watercourse crossing and/or road construction or reconstruction projects.

The primary goals of the RRGO are to improve the Regional Water Board's permitting tools for road-related construction and reconstruction activities, expand regulatory engagement, increase administrative efficiencies, and improve water quality protection. The proposed Order is intended to ensure that rural road projects are designed and implemented to incorporate measures to protect water quality to the greatest extent feasible. It does not require landowners to conduct projects that they otherwise were not planning to do. However, in addition to routine rural road treatment projects, the RRGO may also be used as a permitting tool for those projects that may be required pursuant to a regulatory action by the Regional Water Board or other agency, such as projects that are required through an enforcement action, Total Maximum Daily Load (TMDL) Action Plan, or other regulatory requirements.

The Regional Water Board, acting as the lead agency under the California Environmental Quality Act (CEQA), has prepared an Initial Study and Mitigated Negative Declaration as part of the development of this Order. The CEQA review period ran concurrently with the public comment period for the RRGO.

On December 1, 2023, Regional Water Board staff sent out a Notice of Public Hearing and Opportunity to Comment regarding the proposed Order. The public comment period closed on January 14, 2024. The purpose of the Notice was to alert interested persons about the proposed Order, initial study and mitigated negative declaration and solicit input as part of a public participation process. During the public comment period, Regional Water Board staff received five comment letters from the following individuals or organizations:

- Felice Pace
- Alan Levine, Coast Action Group
- California Department of Fish and Wildlife
- Mike Miles, Humboldt Redwood Company
- Dean Prat

This document includes a summary of the comments received, followed by Regional Water Board Staff's response to the comments.

Felice Pace –

Mr. Pace's comments appear to address impacts from logging and logging roads, stating, "The bottom line is that the sediment impairments remain are due overwhelmingly to two factors:

1. inadequate maintenance and repair after storms and at the end of the wet season.
2. hydrologic changes (increased high and flood flows) as a result of excessive watershed disturbances, primarily logging and inadequately maintained logging roads."

Mr. Pace's comments also included an attachment, "Legal Analysis of Draft Order No. R1-2019-0021 [Waste Discharge Requirements for Humboldt Redwood Company's (HRC) forest management activities in the Elk River watershed in Humboldt County]" by Michael Golz, Stanford Environmental Law Clinic Certified Law Student. While there is a component of the WDR addressing HRC's logging roads, the letter addresses issues outside the scope of the proposed Order, and therefore no response is warranted.

While Mr. Pace's two points above regarding inadequate maintenance and the effects of hydrologic change due to watershed disturbance are relevant to water quality, they are beyond the scope of the proposed Order. In particular, we agree that ongoing road maintenance is critical for minimizing sediment discharge from roads, the proposed Order only covers the construction and reconstruction of roads and watercourse crossing and the monitoring period. The monitoring period (up to five years) is intended to ensure projects have been implemented and are performing as designed. Oversight of ongoing road maintenance for covered projects would require significant dedicated staff resources that are unavailable to the Regional Water Board and is beyond the scope of the proposed Order.

Alan Levine –

Mr. Levine's comment letter provides a summary of the proposed Order and road related sediment issues in the region, a history of sediment impairment from human activity in watersheds throughout the region and the efforts by the Regional Water Board and others to address the impairments through Total Maximum Daily Loads (TMDL) and other regulatory efforts (such as permits and enforcement) and the challenges presented due to the scope of the impairments. Mr. Levine's letter also includes a section titled *Comments on the Order and Problems with the Order*. Regional Water Board staff have extracted and responded to specific points Mr. Levine raises as follows:

Comment #1: Significant road construction, re-construction, and management (or lack thereof) occurs in the region – with no oversight.

Response: Mr. Levine is correct that some amount of road construction, re-construction, and management (or lack thereof) occurs in the region – with no oversight (it is unclear how much is conducted outside of the Regional Water Board’s or any other agency’s Regulatory Process). Any such work that impacts or has the potential to impact water quality must be consistent with the Basin Plan, is required to obtain coverage under an applicable permit, and is subject to enforcement if the work is conducted in violation of water quality requirements. The Regional Water Board continues to conduct outreach and develop approaches to expand regulatory oversight of rural road construction, reconstruction, use, and maintenance throughout the region. The proposed Order is designed to improve efficiencies for both project applicants as well as Regional Water Board staff administering and overseeing water quality compliance on such projects, which staff believes will result in more people willing to seek permit coverage for their projects.

Comment #2: Employing appropriate road construction and maintenance principles is not that hard and not expensive. In fact, an ownership would probably save money and resources with practical application of BMPs. Information and support for practical application of BMPs is readily available.

Response: While it is true that upgrading roads likely results in lower long-term maintenance costs and significantly decreasing the need to conduct emergency repair work due to catastrophic failure of watercourse crossings and landslides, the considerable financial outlay and the challenges this can present to “land rich, cash poor” rural landowners should not be dismissed. Recent discussions with road management professionals have provided insight into these costs, with estimates of road inventories ranging from \$2,500 to \$4,000 per mile, and road and watercourse treatments ranging from \$10,000 to \$100,000 per mile, depending upon conditions, location, and overall complexity.

Comment #3: The requirement for submission of Notice of Intent to the Regional Board is dependent on compliance. Who is going to enforce compliance and how?

Response: The proposed Order provides appropriate feedback mechanisms to ensure compliance, such as requiring project proponents to monitor and self-report on site conditions. Regional Water Board staff oversee compliance through a combination of on-site field inspections and office review of project applications and monitoring reports.

Comment #4: For many years (as noted above) the issue of rural road construction and maintenance was ignored. Ignored, in part, due to the size of this issue. This is very large problem than needs to be addressed. Oversight of this problem takes staff and enforcement time. I question the ability of the Board and staff’s ability to effectively address this issue.

Response: While challenging due the large scope, the issue of rural road construction and maintenance has not been ignored by the Regional Water Board. Finding 4 of the proposed Order states that Total Maximum Daily Loads (TMDL) developed for sediment

impaired watersheds, as well as numerous scientific studies, recognize rural roads as being responsible for: 1) increased chronic sediment discharges from hydrologically connected road segments¹; 2) increased potential for stream diversions (stream channel capture), rill and gully erosion, and shallow landslides, and; 3) discharge of significant portions of earthen material contained in the crossing.

Mr. Levine is correct in stating that oversight of this problem takes staff and enforcement time. In recognition of the scope of the problem and challenges it presents, Regional Water Board staff understand we must be strategic in how we oversee nonpoint source discharge from roads. We believe that increasing permitting efficiency, as the proposed Order will do, provides incentives for landowners to undertake road improvement projects and will free up staff resources.

Comment #5: One solution is to have an additional requirement that these road projects must be reported to the County(s) as well and the County staff must be applied to some oversight of these projects. This can be facilitated by every County to have an Grading Ordinance – with a noticing requirement an BMPs spelled out, and a requirement to report to the Regional Board (as noted in the proposed Order).

Response: The North Coast Regional falls within portions of 11 counties. Road and watercourse construction or reconstruction projects are typically subject to county permit requirements, which as Mr. Levine rightly points out, vary by county. Project proponents must comply with all applicable permit requirements from local, state, and federal agencies, as specified under the *General Requirements* section II.d - *This Order does not preclude the need for permits which may be required by other governmental agencies.*

In addition, a new section has been added to the Notice of Intent in which applicants must provide information on any federal, state, and local licenses, permits, and agreements that will be required for projects covered under the Order.

Comment #6: Failure to Notice and failure to apply ordinance (by a County) should be prosecutable.

Response: When an enrollee fails to comply with a permit requirement, the Regional Water Board can take enforcement actions under its own enforcement authority and according to State Board policies. Other public agencies retain responsibility for enforcing their applicable ordinances.

Comment #7: Approved projects under the County Ordinance and Regional Board Order should be enrolled (covered by the Order) for the suggested period of 5 years. If a plan (a submitted plan) is in place, it is more likely to be followed. *Note: It is suggested to get the County(s) involved in noticing, permitting, and project review as the Regional Board does not have current staffing to enforce this Order.*

Response: Mr. Levine's suggestion of a more collaborative process for oversight of rural road projects is intriguing. However, the practical reality is that it is often a challenge to coordinate actions between various state and local agencies who operate under different authorities and procedures. There are 11 counties in the North Coast Region, which greatly complicates any effort to collaborate on a regular basis. It should

also be noted that enrollment in this Order does not preclude or replace any necessary local agency project approvals, including CEQA compliance associated with such approvals.

Comment #8: Additional issues are the monitoring and reporting requirement(s). A methodology must be developed to assure compliance and/or an enforcement mechanism that will support compliance. Documentation for monitoring might be accomplished via photo documentation.

Response: Attachment D of the Order, Monitoring Inspection Form, provides an efficient monitoring methodology in the form of a checklist that guides project proponents to inspect features such as watercourse crossings, road surface drainage, road and landing fill characteristics, and compensatory mitigation. Project proponents must document the results of each of the two required annual inspections on the monitoring inspection form. Reports must contain sufficient information that Regional Water Board staff can clearly understand site conditions following completion of work and throughout the monitoring period, including key results, findings, problems encountered, and corrective actions taken.

Comment #9: Wetland determination is another issue (problem). Historically, protection of wetlands and streams (watercourse crossing and near stream habitat/water quality values) has been ignored with the lack of oversight in rural road construction. Project review and enforcement is key in this area. Again, a partial solution for this issue might be involving the County(s) in permitting and/or involving the Department of Fish and Wildlife in project review.

Response: Finding 23 states, "Disturbance to wetlands and streams should be avoided or minimized to the greatest extent practicable. If it is determined that a wetland will be temporarily or permanently impacted by the proposed project, mitigation will need to be conducted to establish, restore, enhance or preserve the functions and values of wetlands and associated beneficial uses. Any unavoidable impacts to waters must be restored and/or compensated for to ensure compliance with California's Wetland Conservation Policy EO W-59-93, Antidegradation Policy SWRCB resolution No. 68-16 and the State Water Board's, *State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredge or Fill Material to Waters*" of the State).

Section VI of the Notice of Intent requires project applicants to describe impacts to wetlands and stream channels from new watercourse crossing construction as well as any required compensatory mitigation. See also response to comment X, above, this Order does not replace requirements that other agencies may impose upon their review and permitting of enrolled projects.

Comment #10: Why is the Order limited to low volume roads? It is the reality that there are a large number of ranch and rural roads that are problematic and/or the construction and/or reconstruction of these roads needs application of BMPs and oversight. This would help attainment of Water Quality Standards in impaired segments. However, there are numerous large volume roads administered by Counties, private ownerships, and other agencies. All emitting road segments or proposed road construction or re-

construction segments need application of BMPs and oversight by a responsible agency.

Response: The term “low volume” is intentionally left undefined in the proposed Order. This approach allows the Regional Water Board a large degree of discretion in determining whether a project is eligible for coverage. Section I.b (below) clarifies that the proposed Order is not intended for urban or high volume roads or highways, however, it provides the Regional Water Board Executive Officer discretion to determine eligibility when projects meet the intent of the Order and impacts contemplated by the Order:

Section I.b - This Order is generally intended for coverage of low volume private rural roads in forested and rangeland settings that serve residential, recreational and resource management uses and roads and trails on State Park lands. State Highways, roads maintained by the California Department of Transportation (Caltrans), cities and counties are generally not eligible for coverage under the Order. However, there may be exceptions for some low volume road segments that meet the intent of this Order. Projects on State Highways, roads maintained by the California Department of Transportation (Caltrans), cities and counties may be eligible for coverage under this Order if the discharger requests and receives approval from the Regional Water Board Executive Officer.

Comment #11: After many years of not dealing with the problem of rural roads and their management, construction, and re-construction problems (hydrologic interruption and sediment yield), the Regional Board is attempting to develop a program to remedy sediment production from rural roads. Acting on this is way overdue. Acting on this must be accomplished if we are to recover our listed impaired watersheds. However, we must look at how we are going to implement this and make it work – for the benefit of our river systems and our citizens.

Response: Comment noted.

California Department of Fish and Wildlife – The California Department of Fish and Wildlife’s (CDFW) mandate is to manage fish, wildlife, and plant resources in California and their habitats for their ecological values and for their use and enjoyment by the public. CDFW has overlapping jurisdiction along with the Regional Water Board in protecting aquatic resources.

Comment #1: CDFW recommends revising the IS/MND to include the most up to date citation and reference for the most current available edition [of the PWA Handbook]: <https://www.pacificwatershed.com/sites/default/files/RoadsEnglishBOOKApril2015b.pdf>

Response – A footnote has been added that references the citation listed in the PWA Handbook.

Comment #2: CDFW recommends revising the third sentence of the first paragraph of Item 8 on page 11 to:

- California Fish and Game Code section 1602(a) requires any person, state or local government agency, or public utility to notify the California Department of Fish and Wildlife (CDFW) prior to any activity in a river, stream, lake, or streambed

(including rivers, streams and streambeds that have intermittent flow) to allow CDFW to determine if the activity may result in substantial adverse impacts to existing fish and wildlife through a submission of a complete Notification.

Response – The recommended revision has been made.

Comment #3: CDFW recommends that the Initial Study provide analysis on the impact of 6PPD on biological resources from the Order. Additionally, CDFW recommends the Order and Attachment A include measures to prevent runoff containing 6PPD from entering watercourses, such as a bridge capture runoff system which directs to a land-based bio-filtration system (McIntyre et al. 2015), to prevent direct runoff of untreated water on bridge decks from entering salmonid bearing waterways.

Response – All available scientific literature discussing the impacts of 6PPD recognize that it is associated with high volume road use in urban settings. The Order is intended to ensure BMPs for water quality protection are incorporated during construction or reconstruction of rural roads. Such roads by definition have a low volume of traffic and are mostly dirt surfaced, which further reduces tire wear and introduction of 6PPD into the environment. The Regional Water Board is unaware of any literature indicating 6PPD is a problem on low volume rural roads.

In addition, the initial study evaluates all environmental impacts resulting from adoption of the Order and implementation of BMPs required by the Order. For the purposes of analyzing the potential environmental impacts resulting from adoption of the Order, baseline is considered to be the existing conditions at the project site without implementation of BMPs and compliance with the requirements included in the Order. Impacts associated with ongoing use of the road are beyond the scope of the Initial Study and Mitigated Negative Declaration.

Comment #4: To reduce the potential adverse significant impacts to sensitive species (including state and federally listed species) to be consistent with a *Less Than Significant with Mitigation* determination, CDFW recommends revising the Order and the Order's Attachment A to include all of CDFW's recommendations regarding biological assessments and surveys to reach a *Less Than Significant with Mitigation* determination, provided in Comments 10, 11, 15, 20, and 22.

Response – CDFW comments 10, 11, 15, 20 and 22 recommend that the proposed Order require biological assessment and surveys. In circumstances where enrollment under the Order may have a significant impact on biological resources, measures identified within the Order are expected to reduce impacts to a less than significant level. However, in recognition of the importance of ensuring biological resources are adequately identified and protected, the proposed Order has been revised to direct project applicants to consult with, and seek authorization for project activities from, CDFW as appropriate. The majority of projects enrolled in the proposed Order will entail work requiring a Lake and Streambed Alteration Agreement (LSAA) from CDFW. As such, following revisions have been made:

A new General Requirements (below), Section II.e, has been added to the Order. In addition, this language has been added to page 2 of the Notice of Intent, *overview of the steps that occur before a project is permitted under the Order:*

Section II.e:

Prior to any work in any stream or watercourse, with or without water present, when work is to occur the project proponent shall contact CDFW to determine whether an LSA Agreement signed by CDFW, or signed letter from CDFW stating that the activity does not require an LSA Agreement is required.

A section has been added to the Notice of Intent where applicants must provide information on any federal, state, and local licenses, permits, and agreements that will be required for projects covered under the Order.

The following has been added to Attachment A, *Protection of Sensitive Species*:

- If species listed under CESA are (or may be) impacted by the project, a permit for the incidental take of threatened or endangered species may be needed. Contact the regional CDFW office for additional assistance.
- Prior to earthmoving, placement of soil or spoils on undisturbed areas, or modifying vegetation that may result in impacts to special status plants, sensitive natural communities, birds or raptors, project proponents must consult with CDFW to determine appropriate measures needed to avoid, reduce, and mitigate those impacts. If directed by CDFW, such measures shall be based on a biological assessment performed by a qualified biologist that is informed by a 9-quad occurrence search of the California Natural Diversity Database (CNDDDB), an assessment of project area habitat types, and the appropriate completed CDFW endorsed protocol surveys.
- Mitigations may require revegetation plans and habitat restoration plans in addition to monitoring plans for impacted species and habitats. If the project may result in state or federal take the appropriate incidental take permit through CDFW, US Fish and Wildlife Service, or NOAA may be warranted. Pre-project surveys and proposed mitigations shall be included in the Notification to CDFW through the Environmental Permit Information Management System (EPIMS).
- Mitigation for potential impacts to fish, amphibians, and reptiles shall be informed by appropriately timed pre-project surveys performed by a qualified biologist for any project within a fish bearing stream or stream with habitat for non-fish aquatic organisms.
- Work in any stream, lake, or wetland (including hydrologically connected wet areas) shall adhere to mitigations measures and conditions under an applicable LSA Agreement.

The following underlined text has been added to the existing bullet point in Attachment A, *Protection of Sensitive Species*

- Prior to commencing work, designate and mark a no-disturbance buffer or additional seasonal restrictions as directed by applicable agency to protect sensitive species and communities.

Comment #5: To reduce potential impacts to *Less than Significant with Mitigation* for Environmental Checklist Item IV. – Biological Resources, CDFW recommends that the Order include the following:

- The use of heavy equipment and excavation in areas hydrologically connected to a stream (or watercourse) shall not occur between October 15 and June 1 without written approval from Regional Water Board staff, and if activities are to occur after October 15, winterization erosion control materials shall be stockpiled and available for installation on site, and shall be installed within 24-hours of a forecasted precipitation event greater 0.25 inches in 24-hours or 1-inch over 5 days.

Response – Regional Water Board permits establish seasonal work windows and wet weather requirements primarily aimed at preventing work in saturated soil conditions and resulting sediment discharge. Seasonal restrictions should be based on the resource to be protected, which informs the timing of restrictions, as well as restrictions based on site conditions, such as limiting activities during saturated soil conditions and having erosion control measures on site and ready to deploy when rain is forecast. As long as adequate wet weather protection measures are in place, it is appropriate to provide project proponents with an adequate working season as appropriate in order to allow for projects to be completed during a single operating season. While CDFW may require seasonal restrictions unrelated to water quality, such as restrictions related to bird nesting season, such measures are appropriately required and enforced through CDFWs permitting mechanisms rather than a Regional Water Board permit. The standard work window throughout the proposed Order has been revised to April 1 to October 15. Changing the work window to October 15 brings the permit into alignment with other regulatory programs, such as the California Forest Practice Rules, which require erosion control to be in place by that time and defines it as the start of the extended winter period. In addition to the measures identified in response to Comment 4 above, Attachment A includes the following measure which are expected to reduce impacts to a less than significant level:

- Projects permittees are required to monitor weather forecasts throughout the year and must implement measures, including the deployment of erosion and sediment control Best Management Practices (BMPs), to ensure that project activities and conditions are adequately prepared to avoid impacts to water quality from storm runoff.
- Whenever a 7-day National weather forecast of rain for the [nearest precipitation station](#) listed at (<http://www.weather.gov>) includes a minimum of 5 consecutive days with any chance of precipitation, or 3 consecutive days with 30% or greater chance of precipitation, or 2 consecutive days of 50% or greater chance of precipitation, the project shall finish all work underway at crossings, immediately deploy erosion control materials after completing work, and refrain from starting any new work prior to the rain event. Activities shall not resume at the site so long as saturated soil conditions remain. Regardless of season, erosion control measures shall be stockpiled on site if encroachment work occurs when the NWS forecast predicts a “chance” or greater (30% or more) of rain within the week following construction activity.

Comment #6: CDFW recommends that item (d) indicate that the Order may result in impacts *Less Than Significant with Mitigation* and update Attachment A to include sufficient mitigation to reduce impacts to riparian corridors and the stream hyporheic zone at new and upgraded stream crossings. Mitigation may include additional best management practices (BMPs) addressing connectivity impacts to the riparian area and impacts to the hyporheic function of streams that may support aquatic habitats.

Response – CDFW has not provided an example of specific BMPs that are lacking. Regional Water Board staff believe that adequate BMPs to reduce impacts to riparian corridors and the stream hyporheic zone at new and upgraded stream crossings are included in the PWA Handbook as well as Attachment A of the Order. BMPs for protection of aquatic resources are incorporated into all aspects of the techniques described in the PWA Handbook, and Chapter 5, Construction, includes an entire section, *Erosion control during construction*, including a subsection, *Protecting water quality during construction*.

Comment #7: To reduce the potential for substantial impacts to anadromous salmonids and amphibians from sediment impacts to *Less than Significant with Mitigation*, CDFW recommends revising the Order Section II (e) to limit project activities to the period between June 1 to October 14, unless a site-specific request is authorized. If a site-specific authorization is granted, CDFW recommends that Order Section II e. includes the condition that winterization erosion control materials shall be stockpiled on-site and available for deployment during the extent of activity between October 15 and November 15, and between April 2 and June 1.

Response – See response to CDFW comment #5 above.

Comment #8: CDFW recommends revising the inspection dates to be consistent with the CDFW recommended work period dates for watershed that support coho salmon to reduce the likelihood of substantial impacts to spawning coho salmon.

Response – The inspection dates from the Monitoring and Reporting program have been revised in accordance with CDFW's recommendation. Section IV.a.1 of the proposed Order now states:

1. Beginning the first year of project activities, project proponents shall inspect the entire project area according to the following schedule:
 - i. By October 15 to ensure that project has been implemented as designed and that project areas are secure for the period between October 15 and April 1; and
 - ii. Between April 1 and June 15 to assess how the project area has performed during the winter period and to identify whether any problems have developed that require additional work.

Comment #9: CDFW recommends revising the Order's Attachment A General Mitigation Measures, *Temporal Limits on project activities* to limit project activities to June 1 to October 14, unless a site-specific request is authorized. If a site-specific authorization is granted, CDFW recommends that the *Temporal Limits on project activities* includes the condition that winterization erosion control materials shall be

stockpiled on-site and available for deployment during the extent of the activity from October 15 to November 15, and April 2 to June 15.

Response – Attachment A has been revised to specify that standard work season is April 1 to October 1, with additional protection measures to ensure adequate erosion control is in place when rain is forecast and project activities not occur when saturated soil conditions are present. See response to CDFW Comment #5, above.

Comment #10: To reduce potential impacts to special status plants and sensitive natural communities to *Less Than Significant with Mitigation*, CDFW recommends revising the Order Attachment A, Standard Mitigations *Limitation on Earthmoving* to include:

- Prior to earthmoving, placement of soil or spoils on undisturbed areas, or modifying vegetation, the project shall include the appropriate measures to avoid, reduce, and mitigate impacts to special status plants and sensitive natural communities. Measures shall be based on a biological assessment performed by a qualified biologist that is informed by a 9-quad occurrence search of the California Natural Diversity Database (CNDDDB), an assessment of project area habitat types, and the appropriate completed CDFW endorsed protocol floristic surveys.

Response – The following has been added to Attachment A, *Protection of Sensitive Species*:

- Prior to earthmoving, placement of soil or spoils on undisturbed areas, or modifying vegetation that may result in impacts to special status plants, sensitive natural communities, birds or raptors, project proponents must consult with CDFW to determine appropriate measures needed to avoid, reduce, and mitigate those impacts. If directed by CDFW, such measures shall be based on a biological assessment performed by a qualified biologist that is informed by a 9-quad occurrence search of the California Natural Diversity Database (CNDDDB), an assessment of project area habitat types, and the appropriate completed CDFW endorsed protocol surveys.

Comment #11: To reduce potential impacts to birds and raptors to *Less Than Significant with Mitigation*, CDFW recommends revising Order Attachment A, Standard Mitigations *Limitation on Earthmoving* to include:

- Prior to earthmoving, placement of soil or spoils on undisturbed areas, or modifying vegetation; the project shall include the appropriate measures to avoid, reduce, and mitigate impacts to birds and raptors. Measures shall be based on a biological assessment performed by a qualified biologist that is informed by a 9-quad occurrence search of the California Natural Diversity Database (CNDDDB), an assessment of project area habitat types, and the appropriate completed CDFW endorsed protocol bird and raptor surveys.

Response – See response to CDFW Comments #4 and #10, above.

Comment #12: CDFW recommends that the Order's Attachment A *Limitation on Construction Equipment* 9th bullet indicates that biodegradable chainsaw bar oil and other biodegradable petroleum alternatives shall be used whenever feasible to reduce potential delivery of petroleum to the stream.

Response: The recommended text has been added to Attachment A.

Comment #13: Revise the *Erosion Control* 2nd bullet point to include clearly defined metrics for the effective installation of temporary erosion controls (such as within 50-feet to a Class III watercourse, 100-feet from a Class II watercourse, and 150-feet from a Class I watercourse).

Response: We agree that pre-defined distances provide clear guidance for project personnel, however, the watercourse classification referred to in the comment is not widely used outside of the California Forest Practice Rules, nor would the majority of project personnel have the training to correctly classify watercourses. As such, the first bullet under Erosion Control in Attachment A has been revised to incorporate a performance metric (see underlined added text):

Erosion control and sediment detention devices and materials will be incorporated into the project work design and installed as needed at all disturbed areas that have the potential to transport and deliver sediment to streams at the time of project implementation.

Comment #14: To reduce impacts to aquatic special status species to *Less Than Significant with Mitigation*, CDFW recommends revising the *Miscellaneous* 2nd bullet point to include:

- Vehicles shall not be operated in the stream except the minimum necessary to complete the project; no vehicle may be fueled, cleaned, maintained, or stored within 50-feet of a Class III watercourse, 100-feet of a Class II watercourse, or 150-feet of a Class I watercourse, and no vehicle shall be operated or placed where it may deliver petroleum to the stream (per Fish and G. Code, §§ 5650 & 5652.)

Response: See response to CDFW Comment #13 above for reasoning against relying on Forest Practice Rule watercourse classifications. The bullet point has been revised as below (underlined text added) to achieve the comment objective by incorporating a performance-based approach:

- Vehicles and equipment shall not be driven, operated, fueled, cleaned, maintained, or stored in the wet or dry portions of a water body where wetland vegetation, riparian vegetation, or aquatic organisms may be destroyed or placed where it may deliver petroleum to the stream.

Comment #15: To reduce potential adverse impacts to birds and raptors to *Less Than Significant with Mitigation*, CDFW recommends revising Order Attachment A, Standard Mitigations *Miscellaneous* 3rd bullet to include:

- Appropriate mitigations for vegetation disturbance informed by a biological assessment (based on a 9-quad occurrence search of the California Natural Diversity Database (CNDDDB) and project area habitat types) for the project area and the surrounding affected area; and the appropriate surveys, as warranted, by a qualified biologist. Mitigations may include restricting vegetation disturbance to outside the bird nesting season (February to September).

Response – See response to CDFW Comment #4 and #11 above.

Comment #16: To reduce the impacts to special status aquatic resources to *Less Than Significant with Mitigation*, CDFW recommends revising the *Channel Excavation and streambank stabilization* section to state: “If the streambank is disturbed, the banks shall be pulled back to a slope equal to or greater (flatter) than 2:1 horizontal to vertical or to the natural material grade.

Response: Attachment A, *Channel Excavation and stream bank stabilization* states, “If channel side slopes are disturbed, that should be excavated to a stable angle (generally less than 2:1) to prevent slumping and soil movement.”

Comment #17: CDFW recommends revising the Order Attachment A, *Channel Excavation and stream bank stabilization* 4th paragraph to October 15, consistent with the date provided in the *Earthmoving* mitigation measure on page 2, to reduce potential significant impacts to coho salmon to *Less Than Significant with Mitigation*.

Response: The recommended revision has been made.

Comment #18: To reduce the adverse impacts to special status salmonids to *Less than Significant with Mitigation*, CDFW recommends that the Order Attachment A *Limitation on Work in Stream and Wet Areas* be revised to include that projects occurring in streams that potentially, or historically, support fin-fish (Class I Watercourse) shall demonstrate that the stream crossing or stream reconfiguration will allow the passage of all life stages of fish using criteria and methods consistent with the CDFW *California Salmonid Stream Habitat Restoration Handbook: Part XII – Fish Passage Design and Implementation*.

Response: The PWA Handbook provides guidelines for assuring fish passage. However, existing language in Attachment A has been replaced with the following:

Projects occurring in streams that potentially, or historically, support fin-fish (Class I Watercourse) shall demonstrate that the stream crossing or stream reconfiguration will allow the passage of all life stages of fish using criteria and methods consistent with the PWA Handbook or CDFW California Salmonid Stream Habitat Restoration Handbook: Part XII – Fish Passage Design and Implementation.

Comment #19: To reduce the potential for adverse significant impacts to special status species, CDFW recommends the Order’s Attachment A include a glossary for undefined terminology and acronyms used in the Order and its attachments.

Response: Attachment A has been revised to remove any undefined acronyms.

Comment #20: To reduce the potential adverse significant impacts to special status species to *Less Than Significant with Mitigation*, CDFW recommends replacing the Order’s Attachment A, *Limitation on Work in Streams and Wet Areas* 5th bullet with:

- Prior to beginning work, projects shall include appropriate mitigation for special status species (such as California Species of Special Concern, Fish and Game

Code Fully Protected Species, CESA candidate and listed threatened and endangered species, California Native Plant Society Rare Plant ranked botanical species, and California sensitive natural communities, and federally listed threatened and endangered species) that reduce potential adverse impacts to less than significant. These mitigations shall be based on a pre-project biological assessments or surveys by a qualified biologist that is informed by:

- A 9-quad occurrence search of the California Natural Diversity Database (CNDDDB);
- Review of habitat types for the project area, the surrounding affected area, and other potentially impacted areas; and,
- The appropriate protocol surveys, as warranted, performed by a qualified biologist. [CDFW endorsed survey protocols](https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants) may be found at (<https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>)

Response – See response to comment #4 above.

Additionally:

- Prior to any work in any stream or watercourse, with or without water present, when work is to occur the project shall obtain an LSA Agreement signed by CDFW, or signed letter from CDFW stating that the activity does not require an LSA Agreement.
- Mitigation for potential impacts to fish, amphibians, and reptiles shall be informed by appropriately timed pre-project surveys performed by a qualified biologist for any project within a Class I watercourse or a Class II watercourse.
- Pre-project surveys and proposed mitigations shall be included in the Notification to CDFW through the Environmental Permit Information Management System (EPIMS).
- Work in any stream, lake, or wetland (including hydrologically connected wet areas) shall adhere to mitigations measures and conditions under the applicable LSA Agreement.
- If species listed under CESA are (or may be) impacted by the project, a permit for the incidental take of threatened or endangered species may be needed. Contact the regional CDFW office for additional assistance.

Comment #21: To reduce adverse significant impacts to *Less Than Significant with Mitigation*, CDFW recommends revising the *Temporary Stream Diversion and Dewatering: All Live Streams* to include:

- Diversion Plan. If flowing water is present or reasonably anticipated, the project shall include a detailed water diversion/dewatering plan. Dewatering structures may include the use of sandbags, Port-a-dams, water bladder dams, K-rails, or driven sheet metal coffer dams.
- Maintain Aquatic Life. When any dam or other artificial obstruction is being constructed, maintained, or placed in operation, the project shall allow sufficient water at all times to pass downstream to maintain aquatic life below the dam pursuant to Fish and Game Code section 5937.
- Stranded Aquatic Life. Daily checks for stranded aquatic life as the water level in the dewatering area drops. All reasonable efforts shall be made to capture and move all stranded aquatic life observed in the dewatered areas. Capture

methods may include fish landing nets, dip nets, buckets and by hand. Captured aquatic life shall be released immediately in the closest body of water adjacent to the work site. This condition would not allow for the take or disturbance of any State or federally listed species, or State listed species of special concern without the appropriate incidental take permit.

- Fish Passage. Fish passage facilities shall be incorporated into any temporary barrier that may obstruct fish passage. Contact the regional CDFW office for additional guidance prior to installing any temporary barrier to fish passage.
- Flow Velocities. All diversion channels shall be designed to maintain velocities at levels acceptable to fish species.
- Clean Obstruction Only. Any temporary dam or other artificial obstruction constructed to divert streamflow shall only be built from materials which will cause little or no siltation, such as clean gravels.
- Non-Erodible Materials. Only clean non-erodible materials shall be used in the construction of any water diversion device. All materials used for diversion of water shall be removed from the stream at the conclusion of the water diversion, or end of the work period (whichever comes first).
- Extra Sandbags. Extra sandbags shall be readily available to provide additional freeboard for the diversion in the event it becomes evident flows may increase due to rainy conditions. The sandbag diversion may be removed completely only if the stream bank is stable and no undue erosion will occur.
- Maintain Water Quality. Flow shall be diverted in a manner that prevents turbidity, siltation, or pollution and provides flows to downstream reaches. Flows to downstream reaches shall be provided during all times that the natural flow would have supported aquatic life. Flows shall be of sufficient quality and quantity, and of appropriate temperature to support fish and other aquatic life both above and below the diversion. Normal flow shall be restored to the affected stream immediately upon completion of work at that location, or at the end of the work period (whichever comes first).

Response: CDFW's recommended revised language for Temporary Stream Diversion and Dewatering has been included in Attachment A.

Comment #22: To reduce potential adverse impacts to special status species, CDFW recommends replacing the Order Attachment A, *Protection of Sensitive Species* 1st paragraph with:

- Prior to beginning work, the project shall include appropriate mitigation for special status species (such as California Species of Special Concern, Fish and Game Code Fully Protected Species, CESA candidate and listed threatened and endangered species, California Native Plant Society Rare Plant ranked botanical species, and California sensitive natural communities, and federally listed threatened and endangered species) that reduce potential adverse impacts to less than significant. These mitigations shall be based on a pre-project biological assessment by a qualified biologist that is informed by:
 - A 9-quad occurrence search of the California Natural Diversity Database (CNDDDB),
 - Review of habitat types for the project area, the surrounding affected area, and other potentially impacted areas (including forested habitats that may support Northern spotted Owl, other nesting raptors, Marbled Murrelets, and wading bird rookeries); and,

- The appropriate protocol surveys, as warranted, performed by a qualified biologist. CDFW endorsed survey protocols may be found at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281280-plants>

Mitigations may require revegetation plans and habitat restoration plans in addition to monitoring plans for impacted species and habitats. If the project may result in state or federal take the appropriate incidental take permit through CDFW, US Fish and Wildlife Service, or NOAA may be warranted.

Response – See response to comment #4 above.

Comment #23: To reduce potential significant adverse impacts to special status fish, wildlife, and plants to *Less Than Significant with Mitigation*, CDFW recommends replacing the *Protection of Sensitive Species* 4th paragraph with:

- To prevent the spread of invasive organisms that are harmful to plants and animals, all equipment, including but not limited to excavators, graders, barges, etc., shall be decontaminated according to the “California Department of Fish and Wildlife Aquatic Invasive Species Decontamination Protocol”. The treatment listed under the “Recommendation” column shall be preferentially used, when applicable. A combination of treatments which eliminates all species listed in in the decontamination protocol’s “Appendix A” shall be used (treatments shall be performed sequentially, and chemicals shall not be mixed). The BMPs in the decontamination protocol and BMPs which limit the spread of invasive terrestrial plants shall be incorporated whenever feasible.

Response: The recommended text has been added to Attachment A.

Mike Miles

Mr. Miles is [title] of Humboldt Redwood Company, an industrial timber company with approximately 327 square miles (209,300 acres) of coast redwood and Douglas-fir forestland in Humboldt County.

Comment #1: Can the RWB envision and establish a Waiver for Rural Roads reducing enrollment requirements where an existing regulatory programmatic approach such as a CDFW [Master Agreement for Timber Operations] MATO is already in place for the protection of water quality and related resources?

Response: The Regional Water Board recognizes that the HRC’s MATO provides beneficial standards for in channel work. However, there is not sufficient evidence to support the determination that MATOs can be consistently relied upon to provide adequate protection to beneficial uses of water as to justify a programmatic waiver of the application requirements.

Comment #2: HRC anticipates potential use of the new Rural Roads Order for haul road related maintenance activities not directly associated with a Timber Harvest Plan (THP). None the less these haul road maintenance activities are related and necessary to conduct timber operations across the ownership consistent with business needs and TPZ zoning. As such we are seeking clarity in Order regarding its fee structure relative to AB 1492. Specifically, that no fees be required for timber operation-related activities

should this be determined the correct interpretation of AB1492 relative to the draft Order.

Response: Mr. Miles is referring to the Public Resource Code Article 9.5 section 4629.6(c) *On or after July 1, 2013, except for fees applicable for fire prevention or protection within state responsibility area classified lands or timber yield assessments, no currently authorized or required fees shall be charged by the agencies listed in this subdivision for activities or costs associated with the review of a project, inspection and oversight of projects, and permits necessary to conduct timber operations of those departments and boards.*

Regional Water Board interpretation of the statute above regarding fees only applies to “timber operations” conducted under an approved or accepted harvesting document that has not expired. Therefore, projects that are not conducted under an active timber harvest plan would be subject to fees.

Dean Prat

Mr. Prat is a member of the public who previously worked as an Engineering Geologist for the Regional Water Board.

Comment #1: *Does “rural road **and or** watercourse construction and reconstruction” more accurately describe the Regional Water Board’s expectations for how this Order will be used?*

Response: Mr. Prat is correct that the Order can apply to road and/or watercourse crossings but the referenced finding states that the Order applies to both road construction and watercourse crossings, so both types of activities are covered by the Order. Including the word “or” is unnecessary to accurately convey the intent of the Order.

Comment #2: In paragraphs 2, 4, 14 and 15, Mr. Prat addresses whether voluntary road reconstruction projects that do not involve any watercourse crossing reconstruction are required to enroll and suggests the Regional Water Board include a Waiver of Waste Discharge for reconstruction or maintenance of such roads.

Response: Road projects that do not involve any watercourse crossing construction or reconstruction may still have the potential to discharge sediment or otherwise impact beneficial uses of water. Road projects that do not have any potential to impact water quality generally will not be required to obtain a Regional Water Board permit. Finding 8 of the Order has been revised to clarify that the Order is not intended to apply to projects that have no water quality impacts.

Comment #3: Some projects along rural roads may only involve the reconstruction of a watercourse crossing(s) and the disturbed road surface above the crossing. *Is a culvert replacement project that does not include additional road reconstruction a type of project eligible for coverage under this Order?*

Response: Yes. However, Regional Water Board staff would evaluate whether the road approaches to the crossing are hydrologically connected to the watercourse, thereby creating the potential for sediment discharge that would need to be addressed by

implementation of Best Management Practices described in the PWA Handbook or other pertinent guidance document.

Comment #4: The “incidental point source discharge” language should be omitted [from Finding #1] or a definition of “incidental point source discharge” should be added along with the Regional Water Board’s legal authority to authorize “incidental point” source discharges without coverage under a National Pollutant Discharge Elimination System permit.

Response: Finding #1 will retain the incidental point source discharge as the Order includes a Clean Water Act section 401 Water Quality Certification and projects seeking coverage under the Certification may involve incidental point source discharges.

Comment #5: ...in addition to rural road treatment projects, the RRG0 may be used as a permitting tool for those projects that may be required pursuant to a regulatory action by the Regional Water Board or other agency...” *Consider modifying and or adding findings to improve the overall intent and clarity with respect to the comments above.*

Response: Comment noted. We believe the proposed Order accurately conveys the intended meaning and no revision is necessary.

Comment #6: The Order does not accurately portray how stormwater and associated sediment discharges from rural roads that currently exist on the landscape are very different than discharges associated with rural road reconstruction projects.

Response: Finding #8 has been revised to clarify the distinction between sediment discharge from existing roads and watercourse crossings and the effectiveness of implementing BMPs in reducing these discharges, and the need to provide permit coverage due to the potential for discharge from the implementation work.

Comment #7: The source of excess sediment is typically not project related. As stated in the finding, the source of excess sediment is the presence of rural roads.

Response: The Regional Water Board agrees with the comment and believes the text of the proposed Order reflects that. No revision is necessary.

Comment #8: Listing a single finding, Finding 28, under the heading “Additional Findings” appears arbitrary and seems unnecessary. This comment also applies to listing Finding 29 under the heading Supplemental Findings [sic]. Consider removing headings or change to “Finding.”

Response: The heading, “Supplemental Findings” has been removed and Findings 28 and 29 are not listed under, “Additional Findings”.

Comment #9: In paragraphs 9, 10, 11, 12 and 15, Mr. Prat discusses how sediment discharges from existing untreated roads not covered by the proposed Order as well as ongoing incidental discharge from storm-proofed roads will be regulated as required by the NPS Policy, i.e. through a waiver, prohibition, WDR or combination of regulations. Mr. Prat suggests, “Including a waiver of waste discharge requirements for discharges that are not associated with a planned project or storm-proofing activity and a waiver for a suite of maintenance BMPs seems appropriate and would provide an opportunity to be clearer to the public with respect to when and why an NOI for this Order is required.”

Response: The scope of the proposed Order is limited spatially to the footprint of rural road and watercourse crossing construction and reconstruction projects and temporally to the period of project implementation and post completion monitoring (typically 2 to 5 years). The limited scope is based on currently available staff resources and the Regional Water Board's capacity to adequately oversee permit compliance by ensuring that projects adequately implement all required BMPs.

Comment #10: *Why is it necessary to include a description of permanent impact and associated examples in Attachment E if the General Water Quality Certification contained in the Order shall not apply to activities that will result in permanent impacts to waters of the state?*

Response: The Order states (Finding 15) "The General Water Quality Certification contained in this Order shall not apply to activities that will: 1) result in significant unavoidable environmental impacts including permanent impacts to waters of the state.... Attachment E, Compensatory Mitigation Guidance, describes permanent impacts and measures to mitigate for those impacts. Permanent impacts to beneficial uses and ecological functions that include a complete loss of area or degradation of these uses or functions will require submittal and approval of a mitigation plan to offset or compensate for these losses."