

**SECTION I: Waiver of Submittal of Reports of Waste Discharge and Waiver of Waste Discharge Requirements for Timber Harvest Projects on Private (Non-Federal) Lands.**

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. The Order includes: application procedures, eligibility and submission requirements (Section II), waiver for Projects previously enrolled for a waiver of WDR under Order No. R1-2004-0016 (Section III), termination of coverage (Section IV), and Prohibitions (Section V). Definitions used in this Order are detailed in attachment A.

There are five (5) separate categorical waivers for new Projects (i.e. Projects not previously permitted or waived by the Regional Board). Each waiver category has a set of eligibility criteria, general conditions, and specific conditions when appropriate. 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 Discharger 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 II.

**General Conditions that apply to all applications for Waiver:**

The Discharger shall comply with each of the following conditions for all Categorical Waivers established by this Order:

1. An owner/operator (hereinafter referred to as Discharger) shall file the documents set out in Section I, as appropriate.
2. The Discharger shall comply with all applicable requirements and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board.
3. The Discharger shall allow Regional Board staff entry onto the affected property for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section IV.
4. The Discharger shall comply with a monitoring program, unless waived by the Category of Waiver or in writing by the Executive Officer.
5. The Discharger shall conduct timber harvest activities in compliance with the Forest Practice Rules and a THP or NTMP that has been approved by CAL FIRE. In addition, Forest Practice Rules and THP conditions (including

mitigation measures identified and required pursuant to CAL FIRE CEQA process) that are intended to protect water quality shall constitute enforceable conditions under this Order.

6. The Discharger shall comply with all mitigation measures identified in any accompanying CEQA document. CEQA mitigation measures that are intended to protect water quality shall constitute enforceable conditions under this Order.
7. The Discharger shall notify the Regional Board in writing at least 45 days prior to any proposed aerial application of pesticides and 30 days for any proposed ground-based application of pesticides. The notification shall include the type of pesticide(s), method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality requirements.
8. Recommendations and mitigation measures proposed by Regional Board staff during the CAL FIRE Project review and approval process are incorporated into the approved Project.
9. The Discharger must resolve any Non-Concurrence that has been filed with CAL FIRE by Regional Board staff to the satisfaction of the Executive Officer of the Regional Board prior to enrollment in the Categorical Waiver.
10. All new watercourse crossing construction or reconstruction shall occur under authority of local, state, or federal law, and a Streambed Alteration Agreement (Permit) when required by California Department of Fish and Game.
11. All amendments of THPs and NTMPs 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 Discharger to enforcement action and/or termination of waiver coverage for the Project.

**Categorical Waiver B: Emergency, Exemptions, and 3-acre conversions**

The following are waived from submittal of ROWD, THPs, or enrollment application. The threat to water quality by this category of waiver is de minimis. Notification provided by CAL FIRE during its review process is sufficient notification. No additional application or reporting requirements beyond those already established by other regulations is required.

**a. Timber Operations Pursuant to an Emergency Notice**

Eligibility Criteria:

1. Projects that conform to the rules for Emergency Notice pursuant to Forest Practice Rules (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 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.

Specific Conditions: None

Application and/or annual fee for this waiver category: None

**b. Exemptions as defined in Forest Practice Rules**

Eligibility Criteria:

1. Projects that conform to the rules for Exemptions pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1038) administered by CAL FIRE.
2. CAL FIRE has accepted the Notice of Exemption for the Project.

Specific Conditions: None

Application and/or annual fee for this waiver category: None

**c. Conversion Exemptions (also known as 3-acre conversions)**

Eligibility Criteria:

1. Projects that conform to the rules for Conversion exemptions pursuant to Forest Practice Rules (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 Board has received a copy of the notice of acceptance from CAL FIRE.

Specific Conditions:

1. Enrollment under this 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 Section 401 water quality certification from the Regional 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.

Application and/or annual fee for this waiver category: None

### **Categorical Waiver C: Projects in the Garcia Watershed**

In the case of Total Maximum Daily Load Projects, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. The Executive Officer has determined that the Project is in compliance with the Garcia River sediment TMDL Action Plan.

Specific Conditions: None

Application fee for this waiver category: None

### **Categorical Waiver D: Modified Timber Harvest Plan Projects**

Eligibility Criteria:

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

Specific Conditions:

1. If road construction includes new or upgrading of watercourse crossings, the Discharger has submitted a Notice of Intent for the statewide dredge and fill permit and has received a Notice of Exemption for the statewide permit for the project.

Application fee for this waiver category: None

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

#### Eligibility Criteria:

1. The Project meets the definition as a Nonindustrial Timber Management Plan (NTMP) pursuant to Forest Practice Rules (Cal. Code Regs., title 14, §1090) and CAL FIRE has approved the NTMP.

Application fee for this waiver category: A one time application fee of \$250

#### Specific Conditions:

1. The Discharger submits a Project specific Erosion Control Plan (ECP) developed by a qualified professional as specified in Attachment B for the entire logging area of the NTMP. The logging area includes the area to be harvested, the roads used to access the harvest area (appurtenant roads), and the area within 100 feet of these appurtenant access roads. Typically, the ECP is incorporated into the approved NTMP. The ECP shall be updated for each submittal of the Notice of Timber Operations (NTO).
2. The Discharger shall propose a schedule to mitigate all controllable sediment discharge sources (CSDS), and shall implement according to that schedule until directed otherwise by the Executive Officer. Generally, CSDS sites shall be mitigated within the NTMP area identified in the NTO during the life cycle of the NTO.
3. The Discharger shall submit written notice to the Regional Board no less than five (5) days prior to commencement of timber harvest activities under a notice of timber operations (NTO). The notice must include an updated ECP for the entire area contained in the NTO. The notice may consist of a copy of the NTO submitted to CAL FIRE.
4. Timber harvesting activities within Watercourse and Lake Protection Zones<sup>1</sup> must be designed to protect and restore riparian functions and associated beneficial uses and comply with all applicable water quality regulations. Specific conditions 4.a. and 4.b. are intended to meet the Basin Plan temperature objective by preserving natural shade where present and restoring it where it is not present. Alternatives to these specific requirements will be considered for equal or better protection:
  - a. Alternative canopy retention levels received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection. In the absence of an approved alternative, overstory canopy must not be reduced below 85 percent within the first 75 feet of the Class I Watercourse and

Lake Protection Zone<sup>1</sup> (WLPZ) or streamside buffer zone, or within the first 50 feet for Class II WLPZs or streamside buffer zone, and not be reduced below 65 percent for the remainder of the WLPZ or streamside buffer zone.

- b. All trees that are providing shade to Class I and Class II streams during critical summer months (i.e. June, July, August, and September), whether the trees are inside or outside the WLPZ or streamside buffer zone, shall be retained, when the overstory canopy within the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs or streamside buffer zones) is less than 85 percent (%), or when the overstory canopy beyond the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs or streamside buffer zones) is less than 65 percent (%). Any shade tree outside of the WLPZ, which must be retained, shall be marked as a "leave tree." Alternative percent shade retention received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection.

#### 5. Road Plan

The Discharger shall submit a long-term management plan for the road system (Road Plan), developed by a qualified professional and designed with the goal of preventing and minimizing sediment discharge from roads in the NTMP area. Roads refer to logging roads as defined in the Forest Practice Rules; a road other than a public road used by trucks going to and from landings to transport logs and other forest products. The Discharger shall submit the Road Plan within five years of enrollment in the Categorical Waiver. The road system described in the Road Plan shall be constructed, reconstructed, and maintained to prevent or minimize sediment discharge to streams. This shall be accomplished by dispersing road surface drainage, preventing surface erosion from entering streams, protecting stream crossings from failure or diversion, and preventing failure of unstable fills, which would otherwise deliver sediment to streams.

The Road Plan shall include, at a minimum:

- The location of all roads and watercourse crossings within the logging area;
- The current status of each road, including road surface material, road and watercourse design, and use restrictions;
- The future plan and implementation schedule for each road; and

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<sup>1</sup> WLPZ is defined in the Forest Practice Rules. (Cal. Code Regs., tit. 14, § 916.)

- A long term inspection and maintenance schedule designed to ensure that prevention and minimization measures are functioning as intended and to identify and correct any problems that could cause sediment discharge in a timely manner. All roads must either be:
  - inspected and maintained annually, or
  - hydrologically maintenance free, i.e., do not alter natural hydrology of the hillslope, or
  - decommissioned

Roads (including road prism and watercourse crossing drainage structures) that are constructed or reconstructed after enrollment in Categorical Waiver E, shall at a minimum, comply with the standards listed below.

Existing usable roads will be upgraded to the standards below according to a schedule developed by the Discharger and approved by the Executive Officer of the Regional Board. It is expected that significant portions of the road system will be upgraded concurrently with timber harvest activities or through compliance with other regulatory programs. Roads that are not needed as part of the long-term road system and that discharge or threaten to discharge earthen material to waters of the state shall be scheduled as necessary for abandonment or obliteration as Controllable Sediment Discharge Sources under the Erosion Control Plan. The implementation schedule may be revised as warranted by changed conditions if agreed to in writing by the Executive Officer.

#### Stream Crossings:

- All stream crossings must have a drainage structure designed for the 100 year return interval discharge and pass any reasonable amount of debris;
- Stream crossings must be designed so that in the event of plugging, the stream is not diverted out of its channel;
- Stream crossing inlets and outlets must be protected from erosion;
- Stream crossing outlets must not discharge onto road fill;
- Stream crossing inlets must have low potential for plugging;
- Culvert inlet, outlet, and bottom must be open and in sound condition;
- Fills must be stable, and unstable fills are removed or stabilized;
- Road surfaces and ditches must be disconnected from streams;
- Decommissioned roads must have all stream crossings completely excavated to original grade; and
- Fish bearing streams must have no barriers to fish passage

#### Road and Landing Fills

- Unstable and potentially unstable road and landing fills are removed; and
- Excavated spoil is placed in locations where earthen material will not discharge to a stream

Road Surface Drainage

- Road surface runoff must be dispersed by outsloping where feasible;
- Road surfaces and ditches must be disconnected from streams to the extent feasible. Road segments that cannot be disconnected from streams shall be stabilized to prevent surface erosion;
- Ditches must be drained frequently by functional rolling dips or ditch relief culverts;
- Outflow from ditch relief culverts must not discharge to streams, onto erodible fill, or onto active or potential landslides; and
- Gullies must be dewatered to the extent feasible

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

Other Projects include standard THPs, or other timber harvesting activities in compliance with CEQA, the following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Any other Project, such as a Timber Harvest Plan (THP) under the FPRs approved by CAL FIRE, or other timber projects in compliance with CEQA.

Application fee for this waiver category: A one time application fee of \$250

Specific Conditions:

The following specific conditions shall apply to THPs and other timber projects. The Discharger shall prepare a brief summary describing how the project meets each of the eligibility criteria listed below. The summary may be incorporated into the plan or project, or may be submitted along with the application seeking coverage under this Waiver Category:

1. Dischargers shall submit a site specific Erosion Control Plan developed by a qualified professional for the entire logging area and include that in the approved THP or timber project as specified in Attachment B, which shall be fully implemented prior to the final project completion.
2. Timber harvest activities on all landslides and geomorphic features related to landsliding shall be designed to prevent and minimize sediment discharge related to landsliding. Prior to timber harvest activities on landslides or geomorphic features related to landsliding,<sup>2</sup> the discharger shall prepare and submit a geologic report. 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

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<sup>2</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.

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.

3. 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.

Projects that meet specific conditions 4 and 5 are not required to meet specific condition 6. Projects that meet specific condition 6 are not required to meet specific conditions 4 and 5.

4. Post harvest stocking within the Project area shall comply with the unevenaged stocking requirements of the FPR or in the case of evenaged harvesting methods shall maintain a canopy closure of at least 65 percent (%) comprised of commercial species at least 30 feet in height.
5. Timber harvesting activities with Watercourse and Lake Protection Zones must be designed to protect and restore riparian functions and associated beneficial uses and comply with all applicable water quality regulations. Specific condition 5.a. and 5.b. are intended to meet the Basin Plan temperature objective by preserving natural shade where present and restoring it where it is not present. Alternatives to these specific requirements will be considered for equal or better protection:
  - a. Alternative canopy retention levels received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection. In the absence of an approved alternative, overstory canopy shall not be reduced below 85 percent within the first 75 feet of the Class I Watercourse and Lake Protection Zone<sup>3</sup> (WLPZ) or streamside buffer zone, or within the first 50 feet for Class II WLPZs or streamside buffer zone, and not be reduced below 65 percent for the remainder of the WLPZ or streamside buffer zone.
  - b. All trees that are providing shade to Class I and Class II streams during critical summer months (i.e. June-September), whether the trees are inside or outside the WLPZ, shall be retained, when the overstory canopy within the first 75 feet of a Class I WLPZ (50 feet for Class II WLPZs) is less than 85 percent (%), or when the overstory canopy beyond the first 75 feet of a Class I WLPZ or streamside buffer zone (50 feet for Class II WLPZs) is less than 65 percent (%). Any shade tree which must be retained shall be marked as a "leave tree."

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<sup>3</sup> WLPZ is defined in the Forest Practice Rules 14CFR 916

Alternative percent shade retention received in writing may be approved by the Executive Officer, if the discharger demonstrates that such an alternative provides equal or better protection.

6. To employ clearcutting (evenaged harvesting method) on slopes of less than 65 percent (%) and with a canopy closure of less than 65 percent (%) comprised of commercial species at least 30 feet in height, a riparian management zone (RMZ) must be established on each side of the watercourse for a distance of 300 feet on a Class I watercourse, 200 feet on a Class II watercourse, and 100 feet on a Class III watercourse. Within the RMZ, no harvesting may occur within the first 30 feet of Class I and II watercourses and within 10 feet of Class III watercourses. It is the intent of this condition to allow clearcutting with the maintenance of a substantial functional riparian zone and buffer.

If the following canopy conditions are not currently met, this specific condition will not be applied to the THP. Beyond the no harvest zone, overstory canopy must be maintained at a minimum of 85 percent for a distance of 150 feet from a Class I watercourse, 100 feet from a Class II watercourse, and 50 feet from a Class III watercourse. Overstory canopy must be maintained at a minimum of 65 percent in the remainder of the RMZ.

If the Project includes evenaged harvesting (clearcutting) methods which maintain a canopy closure of less than 65 percent (%) comprised of commercial species at least 30 feet in height on slopes greater than 65 percent (%), the Discharger shall prepare and submit a geologic report according to the criteria specified above in Section I(F)(3).

7. Roads shall be hydrologically disconnected from watercourses to the extent feasible. 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.
8. No Timber harvest activities, including, log hauling, ground based yarding, road construction, road reconstruction, or road rocking shall occur during the winter period (November 15 to April 1). This does not include work necessary to apply or maintain erosion control management practices or and sediment control to reduce sediment discharge.

9. No timber harvest activities shall occur during measurable rain events (defined as greater than ¼" in a 24-hour period). 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,

#### 10. Sediment Prevention Plan

The Discharger shall develop and submit a Sediment Prevention Plan 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 percent (%) within 200 feet of a watercourse,
- b. Construction of more than 1,000 feet of new roads,
- c. Heavy equipment will be used within a WLPZ, equipment limitation zone, or streamside buffer zone of a watercourse, except for the following situations:
  - use of existing permanent roads,
  - use of existing bridges and culverts as skid trail crossings and maintenance of associated drainage facilities or structures,
  - 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,
- d. Ground based heavy equipment operations on slopes exceeding 50 percent (%).

A Sediment Prevention Plan 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. A Sediment Prevention Plan differs from an Erosion Control Plan in that it is intended to prevent and minimize creation of *new* sources of sediment discharge from operations conducted under the current Project, while an ECP is intended to prevent and minimize sediment discharge from *existing* sources.

The Sediment Prevention Plan (SPP) shall be developed by a qualified professional. The Sediment Prevention Plan (SPP) 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. The sediment prevention plan must include a map clearly showing the location(s) of the site(s) where prevention and minimization measures described in the plan will be implemented.

## **SECTION II: APPLICATION PROCEDURES AND SUBMISSION 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 Discharger 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 Discharger must seek enrollment under an individual waiver, general WDRs, individual WDRs, or watershed wide WDRs.

Generally, the Regional Board receives approved or accepted Project documents from CAL FIRE or the lead agency. These documents are part of the record for each categorical waiver. However, the discharger is responsible to ensure the Regional Board receives the approved THP, NTMP, environmental document, ECP or other documents that may be part of an approved THP, NTMP, or other timber project.

- A. To seek coverage for Projects under a categorical waiver set out in Section I, Categorical Waivers C - F, the Discharger must submit to the Regional Board a "Certification Notice" that:
  1. Is signed by the land owner or designee proposing the project,
  2. Identifies the type of categorical waiver requested (Categorical Waiver C: Total Maximum Daily Load Plan Projects; Categorical Waiver D: Modified Timber Harvest Plan Projects; Categorical Waiver E: Nonindustrial Timber Management Plan Projects, or Categorical Waiver F: Other Projects, THPs),
  3. Acknowledges, that the Discharger 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 .
  4. Submits the applicable application fee for Categorical Waiver E and F established by this Order.
- B. The submission of a Certification Notice is not required for projects qualifying for coverage under the categorical waiver set out in Section I Categorical Waiver B: Emergency and Exemption Projects. Such Projects must, however, meet the eligibility criteria and conditions, both general and specific, to obtain and maintain coverage under Section I Categorical Waiver B.
- C. For project proponents applying for coverage under Categorical Waiver C-F, the Discharger may not commence timber harvesting activity until the Discharger has received written notification from the Executive Officer

stating that coverage under this Categorical Waiver is appropriate. The Executive Officer will notify the Discharger in writing if coverage under the categorical waiver is determined to be inappropriate. It is anticipated that projects which have had thorough Regional Board staff involvement in the review and approval process will receive written notification of coverage within ten (10) working days of receipt of a complete Certification Notice.

- D. For an approved Program Timberland Environmental Impact Report (PTEIR), the proponent of each future Program Timber Harvesting Plan (PTHP) may seek coverage under this Order for each new PTHP. If the PTHP did not qualify for coverage under this Order, the Discharger may seek coverage under the Order No. R1-2004-0030, General Waste Discharge Requirements for Timber Harvest Activities on Non-Federal Land. Alternatively, Dischargers may seek coverage under an individual waiver or individual waste discharge requirements.
- E. Dischargers 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 unpermitted discharge of waste.

**SECTION III: WAIVER OF REPORTS OF WASTE DISCHARGE AND WASTE DISCHARGE REQUIREMENTS FOR PROJECTS PREVIOUSLY WAIVED UNDER ORDER NO. R1-2004-0016**

Projects that were previously waived under Order No. R1-2004-0016 may be covered under this Order provided they qualify for one of the categorical waivers described in Sections I(B)-(F) and meet the General Conditions described in Section I(A) and the eligibility criteria for each Categorical Waiver. No application is required for Projects that meet the eligibility criteria for Categorical Waivers B, C, D, and F.

However, Non-Industrial Timber Management Plans that were waived under Order No. R1-2004-0016 must apply for coverage under Categorical Waiver E prior to the next notice of timber operations (NTO) submitted after June 4, 2010. Those NTMPs applying for coverage under this Order must meet the applicable eligibility criteria and conditions. Previously waived NTMPs must develop and submit an ECP as specified in Attachment B for each NTO submitted after June 4, 2010. Such previously waived plans must complete and submit, an ECP for the entire NTMP area to the Regional Board by the first NTO submitted after June 4, 2014.

The Executive Officer may, upon receipt of a NTO, modify the ECP and/or road plan requirements, (including timing and extent of the required submittal), based on the following:

- terms and conditions of the NTMP,
- amount of total NTMP acreage,
- existence of a Ranch or Road Plan prepared by a qualified professional,

- CESA compliance or acceptable CAL FIRE impaired or special watershed prescription or T/I rule,
- the need for fire reduction,
- applicable Regional Board adopted sediment Best Management Practices for roads or ranches or,
- other relevant characteristic of the hydrographic unit.

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

- A. To terminate coverage under a categorical waiver upon completion of the Project, a Discharger must submit a final certification to the Regional Board. The certification shall:
1. Be signed by the landowner,
  2. Document the Project was conducted in conformance with the approved or accepted Project and with all applicable provisions of this Order,
  3. Document that discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality requirements, and
  4. Include a final annual inspection summary report to the Regional Board along with the final certification.
- B. Notwithstanding any other provision of this Order, the burden of proof is on the Discharger 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.
- C. The Executive Officer shall terminate the applicability of a categorical waiver to a specific project if the Executive Officer makes any of the following determinations:
1. The Project does not comply with the eligibility criteria for the waiver;
  2. The Project is not in compliance with the applicable conditions of the waiver;
  3. The Project is reasonably likely to result or has resulted in a violation or exceedence of any water quality requirements;
  4. The Project has varied in whole or in any part from the approved Project in any way that could adversely affect water quality;
  5. 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;

6. 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;
  7. When requested by another state agency, a subdivision of the state (county) or a federal agency, and with concurrence by the Executive Officer.
- D. Upon receipt of a Notice of Termination of a categorical waiver, the Discharger shall immediately cease all timber harvest activities that may result in discharges of waste to waters of the state, other than activities necessary to control erosion. Upon notice of termination, the Discharger must apply for coverage under general WDRs or file a Report of Waste Discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the state may commence only upon enrollment by the Executive Officer under general or watershed wide WDRs, the adoption by the Regional Board of an individual waiver of WDRs or individual WDRs, or in accordance with Water Code section 13264(a).
  - E. The applicability of this Order to a specific project is immediately terminated upon the discharger's receipt of a Notice of Termination of applicability 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 a NPDES permit that covers or permits the specific Project.
  - F. Where waste discharge requirements have been issued by the Regional or State Water Resources Control Board and have not expired, a waiver of that discharge shall not be obtained without a decision by the Regional Board following a public hearing. Thus the Categorical Waiver cannot be used to modify any existing order of the Regional Board during the life of the permit.
  - G. 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.
  - H. Order No. R1-2009-0038 shall expire five years from the adoption date.
  - I. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under California Water Code sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.
  - J. As provided by Water Code section 13350(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 Discharger 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 discharger obtain a construction stormwater permit and possibly a federal dredge and fill permit with accompanying 401 water quality certification if discharge occurs in waters of the United States.
5. The Discharger shall not adversely impact human health or the environment, or the beneficial uses of water set out in the Basin Plan.
6. The Discharger and Project shall comply with applicable local, state or federal laws and regulations.

### Certification:

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 4, 2009.

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Catherine Kuhlman  
Executive Officer

## Attachment A

### DEFINITIONS

- A. "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.
- B. "Discharger" means the timberland owner and anyone working on behalf of the timberland owner in the conduct of timber harvest activities on non-federal lands.
- C. "Erosion Control Plan" (ECP) means a plan designed and implemented to prevent and minimize the discharge of sediment from existing sites to waters of the state in violation of water quality requirements or other conditions of this Order and submitted with the Project seeking coverage under the Categorical Waiver E: Nonindustrial Timber Management Plans (NTMPs) and Categorical Waiver F: Other Projects (THPs and Other Timber Harvesting Projects). The Erosion Control Plan (ECP) must be developed by a qualified professional. The ECP must include but is not limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, site specific designs and/or management measures to prevent and minimize the discharge of sediment, and a time schedule for implementation of site specific designs and/or management measures. Specific instructions to complete an ECP are included in Attachment B.
- D. "Minimization" means the discharge or threatened discharge of sediment that cannot be prevented during design and implementation of the Project.
- E. "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.
- F. "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.

- G. "Project" means any Timber Harvest Plan, Nonindustrial Timber Management Plan, 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 has compliance with CEQA.
- H. "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.
- I. "Sediment Prevention Plan" (SPP) means a plan designed and implemented to prevent and minimize the creation of new sites that discharge sediment to waters of the State. The Sediment plan is submitted by a discharger seeking coverage for a Project under Categorical Waiver F: Other Projects (THPs and Other Timber Harvesting Projects). The SPP must be developed by a qualified professional. The Sediment Prevention Plan (SPP) must include, but not be limited to, a map clearly showing the location(s) of the site(s) that could discharge sediment, and site-specific designs and/or management measures to prevent and minimize the discharge of sediment.
- J. "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 treemarking, surveying or roadflagging.
- K. "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.

- L. "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 Board and approved by the State Water Board, and all other applicable plans or policies adopted by the Regional 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.

All other terms shall have the same definitions as prescribed by the California Forest Practice Act and Rules in effect as of June 4, 2009, and the Porter-Cologne Water Quality Control Act.

## **Attachment B**

### **CONTENTS OF AN EROSION CONTROL PLAN (ECP)**

An Erosion Control Plan, must be developed and implemented for timber harvesting, including the logging area, roads and skid trails used to access or haul timber harvesting materials that are owned by or under the control of the Discharger. The ECP must be designed to prevent and minimize the discharge or threatened discharge of sediment from existing Controllable Sediment Discharge Sources into waters of the state in violation of water quality requirements or other provisions of this Order. The Discharger must develop and submit an ECP for coverage under the Categorical Waiver E: Nonindustrial Timber Management Plans (NTMPs) and Categorical Waiver F: Other Projects (THPs and Other Timber Harvesting Projects) as follows:

CSDS are defined as 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 these General WDRs,
2. was caused or affected by human activity, and
3. to the maximum extent practicable may feasibly and reasonably, respond to prevention and minimization management measures.

Controllable sediment discharge sources include, but are not limited to, failing or failed watercourse crossings, road failures, road surfaces, landslides, unstable features discharging to or near watercourses, unstable watercourse banks, soil stockpiles, storage of waste, skid trails, landings, exposed harvest units, or any other location discharging or threatening to discharge waste or earthen materials. The ECP shall be amended and revised, when necessary, to meet this standard. No Project may conduct activities that can reasonably be expected to create new sediment discharge sources where none previously existed.

The ECP may be included with the initial submittal of a project, in which case it can be reviewed concurrently with the project, or separately as part of the application for a Categorical Waiver.

#### Contents of an ECP

- a. An Inventory and Treatment of Controllable Sediment Discharge Sources within the logging area.

The inventory must identify controllable sediment discharge sources and inform the development of a time schedule for implementation of prevention and minimization management measures. The inventory must include an on-the-ground survey and site evaluations, and may be

augmented by additional information sources such as aerial photographs or previously prepared reports. Any method or model used to develop the inventory must be briefly described and must be reasonably expected to detect sediment discharge sources and to effectively prevent and minimize sediment discharge. The inventory must include:

- i. A brief description of the method(s) used to conduct the inventory. This description provides the reviewer with an understanding of the thoroughness of the survey method and the likelihood that CSDSs have been identified. For example, the description identifies any aerial photographs used, and whether the Discharger inventoried all watercourses and skid trails,
- ii. A description of each site, including sufficient information to provide the reviewer with an understanding of current conditions and why the site meets the definition of a CSDS,
- iii. A topographic map, at a scale of 1:12000 or greater (e.g. 1:6000) with no greater than 80' contours, showing the logging area and the location of all controllable sediment discharge sources included in the inventory,
- iv. An estimate of the potential deliverable sediment volume for each inventoried site. The potential deliverable sediment volume represents an estimate of the maximum volume of sediment that could discharge to waters of the state in the event of complete failure of a site,
- v. A narrative description of the site-specific prevention and minimization management measure(s) prescribed for each controllable sediment discharge source identified in the inventory. Prevention and minimization management measures must be reasonably expected to effectively prevent and minimize specific sediment discharge sources in the logging area. The description must provide sufficient design and construction specifications, including but not limited to diagrams, minimum rock size, or performance standards as needed, to allow on site personnel to implement prevention and minimization measures as intended,
- vi. Priority for implementation of prevention and minimization measures. The priority must be used to develop the time schedule for implementation and must be based on the potential impacts to the beneficial uses of water. The priority must consider at a minimum the estimate of the deliverable volume of sediment, the imminence of failure, and the sensitivity of beneficial uses of water in receiving streams. In general, the highest priority is assigned to sites with large sediment discharge sources that show an imminent risk of failure and that will discharge to waters that support domestic water supplies or fish. Priority may be indicated as low, medium, or high,

vii. A time schedule for implementation of prevention and minimization management measures contained in the ECP that provides for timely implementation to prevent and minimize sediment discharge from sites in the order of priority. For THPs, implementation must be during the time an individual THP is active, or during the NTO covering the area in which a CSDS is located, unless an alternative time schedule is agreed to in writing by the Executive Officer. The schedule may specify a time range for implementation, for example the plan may state that a site shall be completed during the first two years of operations on the plan, as long as the schedule includes a final completion date. The time schedule for implementation may be revised as warranted by changed conditions if agreed to in writing by the Executive Officer.

b. Inspection Plan and Reporting Requirements

For each Project enrolled in Categorical Waivers E and F, Dischargers must follow the Inspection Plan detailed below for evaluating the implementation and effectiveness of the management measures in the Erosion Control Plan, to determine if any new controllable sediment discharge sources have developed within the Project area, and to ensure that all drainage facilities and erosion control structures are functioning properly in order to prevent sediment discharge to waters of the state.

The Inspection Plan must include a narrative discussion of the program to inspect and maintain all identified management measures designed to prevent and minimize sediment discharge throughout the duration of the Project. A site map that depicts the inspection locations to be visited before and after the winter period must be included in the Inspection Plan. Inspections must include, at a minimum, logging area roads that could discharge sediment, sites and locations addressed in the sediment prevention plan, and controllable sediment discharge sources contained in the ECP.

Each CSDS must be inspected during each required inspection. Additionally, inspectors should strive to inspect all accessible portions of the road system that have the potential to discharge sediment to watercourses to ensure roads are draining adequately and watercourse crossings are functioning properly and identify any new CSDS sites that may have developed. Inspectors must note the conditions of CSDS sites and any failures or ineffectiveness of management measures.

Inspections conducted prior to the winter period must be designed to assure that management measures are properly installed and maintained. Post-winter period inspections must be designed to assure that the management measures have functioned adequately and to determine whether any new controllable sediment discharge sources have developed. Management measures must be evaluated for adequacy and

proper implementation and whether additional management measures are required in accordance with the terms of this Order.

Landowners and Qualified professionals must conduct all specified inspections of the Project site to identify areas causing or contributing to a violation of applicable water quality requirements or other provisions of the Categorical Waiver. The name(s) and contact number(s) of the assigned inspection personnel must be listed in the Inspection Plan.

The following inspection requirements begin once the startup of timber harvest activities begin within Project areas:

- i. Inspections must be conducted as follows:
    - By November 15 to assure Project areas are secure for the winter; and
    - After April 1 and before June 15 to assess the effectiveness of management measures designed to address controllable sediment discharges and to determine if any new controllable sediment discharge sources have developed.
    - For THPs and other non-NTMP projects, inspections must be conducted each year according to the schedule specified above until the Project has been completed and the Discharger has submitted a Notice of Termination.
    - For NTMPs, inspections must be conducted each year according the schedule specified above until a final completion report for each NTO has been signed by CAL FIRE.
  - ii. Projects for which Timber Harvest Activities have not yet Commenced: No inspections are required.
  - iii. If any new controllable sediment discharge sources are identified during inspections, prevention and minimization measures must be implemented as soon as is feasible. New controllable sediment discharge sources shall be evaluated and addressed in accordance with the provisions described above, and included in a revised ECP. The revised ECP must be submitted to Regional Board staff with the annual summary inspection report.
  - iv. Equipment, materials, and workers must be available for rapid response to failures and emergencies, and implement, as feasible, emergency management measures depending upon field conditions and worker safety for access.
- c. Reporting Requirements  
Discharger must submit an inspection summary report to the Executive Officer by June 30<sup>th</sup> for each year of coverage under these Categorical Waivers and upon termination of coverage. The inspection summary report must include the following information, at a minimum:

- the date of each inspection,
- the inspector's name,
- the location of each inspection,
- the title and name of the person submitting the summary report,
- a brief narrative description of observed conditions,
- a description of any new controllable sediment discharge sources identified during inspections or throughout the course of routine timber harvest activities,
- a description of any corrective action taken to prevent and minimize sediment discharge as a result of observations made during the inspections, as well as the date the corrective action was taken,
- a description of prevention and minimization measures contained in the ECP implemented up to the date of submission of the report, the date those measures were implemented, and an evaluation of the effectiveness of those measures,
- a description of where management measures have been ineffective and when the Discharger will implement repairs or design changes to correct management measure failures.

A final inspection summary report shall be submitted with the final Certification Notice.

**EXHIBIT 2**

The following list of interested parties receiving notification was obtained from the Regional Water Board.

- 1 Jim Able
- 2 Henry Alden
- 3 Charlotte Ambrose
- 4 Carl Anderson
- 5 Mark Andre
- 6 Mike Atkins
- 7 Nadine Bailey
- 8 Robert Ballard
- 9 MARK EDWARDS
- 10 CHARLES ABSHEAR
- 11 Jeff Shultz
- 12 Tom Walz
- 13 Bill Blackwell
- 14 Thomas Blair
- 15 Craig Blencowe
- 16 Thembi Borrás
- 17 WILLIAM DANN
- 18 Scott Buttler
- 19 Pete Cafferata
- 20 Dan Cahoon
- 21 Chris Carroll
- 22 Chuck Ciancio
- 23 Jim Clark
- 24 CLFA
- 25 JARED GERSTEIN
- 26 Ben Cohoon
- 27 Ric Costales
- 28 Richard Cox
- 29 Mark D. Collins
- 30 Eric da Rosa
- 31 Mark Distefano
- 32 Nick d'Usseau
- 33 Thomas E. Smythe
- 34 Glen Edwards
- 35 LOREN BERRY
- 36 ANDREW ELSBREE
- 37 Jim Eler
- 38 James Eler
- 39 CARL ANDERSON
- 40 Jim Falls
- 41 Stu Farber
- 42 California Forester Association
- 43 David Frykman
- 44 John Hanes
- 45 George Gentry
- 46 Gerad Gerstien
- 47 Richard Gienger
- 48 Linwood Gill
- 49 Daniel Gotsky

50 Scott Greacen  
51 Matt Greene  
52 Brian Griesbach  
53 Jenny Griffin  
54 Jay Holcomb  
55 Dennis Hall  
56 Mark Hannon  
57 Paul Harper  
58 Art Haschak  
59 Mitch Haydon  
60 Jon Hendrix  
61 Barry Hill  
62 Steve Hohman  
63 Rick Holub  
64 Pat Hovland  
65 Mike Howell  
66 Arne Hultgren  
67 Isbell  
68 Randy Jacobszoon  
69 NIEL FISCHER  
70 JOSEPH CINEK  
71 Scott Kelly  
72 Nick Kent  
73 Tom Kisiuk  
74 Greg Kostick  
75 Greg Kostick  
76 Steve Launi  
77 Alan Levine  
78 David Levy  
79 Merritt Lindgren  
80 Dustin Lindler  
81 James Little  
82 Jeff Longcrier  
83 Darcie Mahoney  
84 Larry Maillard  
85 Leslie Markham  
86 Gerald Marshal  
87 Charlie Martin  
88 Lee Martinelli  
89 Claire McAdams  
90 Todd McMahan  
91 Tim Metz  
92 Frank Mileham  
93 Alan Mohr  
94 Mark Moore  
95 Craig Newman  
96 Matt O'Connor  
97 Donald Osterhoudt  
98 Ron Pape  
99 Linda Perkins  
100 FRED EUPHRAT  
101 Michael Powers

102 Mike Powers  
103 John Ramaley  
104 Julia Rhoads  
105 Pete Ribar  
106 Wayne Rice  
107 ROBERT AMESBURY  
108 Robert Rogers  
109 Gary Ryneerson  
110 Tom Scholtz  
111 Ruthann Schulte  
112 Duane Shintaku  
113 Russ Shively  
114 Evan Smith  
115 Tom Smythe  
116 Wendy Snyder  
117 Noel Soucy  
118 Tom Spittler  
119 Bruce Strickler  
120 Charil Stoneman  
121 Mark Stopher  
122 Lee Susan  
123 Brian Talbert  
124 Robert Taylor  
125 Harlan Tranmer  
126 Ed Tunheim  
127 Steve Vanderhorst  
128 BONNIE BURCHILL  
129 Tracy Watkins  
130 Jesse Weaver  
131 RANDALL WIESE  
132 John Williams  
133 John Woessner  
134 Chris Zinny  
135 Seth Zuckerman  
136 GREGORY GIUSTI  
137 Kim Rodriguez  
138 RICHARD HARRIS  
139 TRACY KATELMAN  
140 WILLIAM KLEINER  
141 TIMOTHY METZ  
142 JACK MONSCHKE  
143 DENNIS POSSEHN  
144 CHRIS QUIRMBACH  
145 CHARLES RICHARDSON  
146 ROBERT ROGERS  
147 ROBERT RYNEARSON  
148 JEFFREY SCHIMKE  
149 JAMES SORENSEN  
150 TED TSUDAMA  
151 YANA VALACHOVIC  
152 GARY URDAHL  
153 ROY WEBSTER

- 154 Friends of the Gualala River
- 155 EPIC
- 156 Mattole Restoration Council
- 157 Institute for Sustainable Forestry
- 158 Five County Coho Project
- 159 City of Arcata
- 160 Humboldt Watershed Council
- 161 Californians for Alternatives to Toxics
- 162 Friends of the Van Duzen
- 163 North Coast Environmental Center
- 164 Buckeye Conservancy
- 165 California Forestland Owners
- 166 Friends of the Eel River
- 167 Humboldt Redwoods Co, LLC
- 168 Roseburg Forest Products
- 169 Michigan-California Lumber Co.
- 170 Stimson Lumber Company
- 171 Green Diamond Resource Company
- 172 Sierra Pacific Industries
- 173 Mendocino Redwood Company
- 174 Gualala Redwood Company
- 175 Hawthorne Timber Company
- 176 Fruit Growers Supply Company
- 177 Barnum Timber Company
- 178 Baldwin, Blomstrom, Wilkinson, and Associates
- 179 The Conservation Fund
- 180 Coastal Ridges, LLC.
- 181 Soper Wheeler Company
- 182 Mason, Bruce, and Girard, Inc.
- 183 Timberland Resources Consultants
- 184 NRM
- 185 NCRM

**EXHIBIT 3**

1 NORTH COAST REGIONAL WATER QUALITY CONTROL BOARD

2  
3  
4 *In the Matter of:*

Order No.: R1-2009-0038

(Superseding Order No.R1-2004-0016)

5  
6 CATEGORICAL WAIVERS FOR  
7 DISCHARGES RELATED TO TIMBER  
8 HARVEST ACTIVITIES ON NON-  
9 FEDERAL LAND IN THE NORTH COAST  
10 REGION

**DECLARATION OF JOHN W. WILLIAMS  
IN SUPPORT OF REQUEST FOR  
IMMEDIATE STAY OF ORDER NO.  
R1-2009-0038**

11  
12 **Date:** July 06, 2009

13 I, John W. Williams, declare as follows:

14 1. I am a California Registered Forester, No. 1677, with 34 years experience actively  
15 working in forest management in Sonoma and Mendocino Counties.

16 2. I am President of Environmental Resource Solutions, Inc., a full-service natural  
17 resources consulting firm specializing in forestry services. My firm has prepared Non-industrial  
18 Timber Management Plan ("NTMPs") for clients who relied on the assurances made to them by the  
19 California legislature that once approved they would be able to manage their timberland following  
20 the environmental constraints and conditions of the approved plan without fear of future regulatory  
21 changes that would put at risk their considerable economic investment in sustainable forest land  
22 management.

23 3. I attended the public hearing conducted by the North Coast Regional Water Quality  
24 Control Board on June 4, 2009 where I testified regarding the revisions to the Categorical Waiver of  
25 Waste Discharge Requirements for discharges Related to Timber Harvest Activities on Non-Federal  
26 Lands in the North Coast Region ("Categorical Waiver") and where I expressed concerns and  
27 objections to the proposed Order.

28 4. Substantial harm will occur to Petitioners timberland owners, those with NTMPs and  
those who plan to harvest timber under a THP, if a stay is not granted.

1           5.       Regional Board staff is already imposing the Categorical Waiver conditions on future  
2 timber operations proposed to be conducted on previously approved NTMPs.

3           6.       The requirements of the Categorical Waiver impose new and costly requirements on  
4 landowners, including, among other things, shade requirements that will apply immediately to both  
5 NTMPs and timber harvest plans.

6           7.       Non-industrial timber landowners whose NTMPs my company has prepared or  
7 managed have operated on their lands in good faith according to the rules of the approved NTMP.

8           8.       Non-industrial timber landowners whose NTMPs my company has prepared or  
9 managed have invested substantial sums of money in infrastructure improvement and environmental  
10 mitigation including those recommended by Water Quality representatives during the approval  
11 review process.

12          9.       Requirements of the revised Categorical Waiver will require some NTMP holders to  
13 undergo expensive removal and replacement of erosion control structures that were required under  
14 the approved NTMP. This constitutes doing the same erosion control work twice to different  
15 standards and can make continued management of some timberlands not economically justifiable.

16          10.      NTMP holders have invested substantial monies and resources in improving the  
17 quality and productivity of their timberlands with the assumption that these investments would be  
18 profitable enterprises that meet the public's need for sustainable timber products under the  
19 regulatory requirements of their approved NTMPs. These improvements and investments include  
20 site preparation and tree planting, management of vegetation in their plantations to ensure forest tree  
21 survival and growth, and control of competing hardwood species. With these actions they are  
22 dramatically improving the productivity of their timberlands. The added costs and regulatory  
23 burden of the Categorical Waiver threatens the economic viability of some of these projects.

24          11.      No Substantial harm will occur to the public interest if a stay is granted because  
25 existing rules are adequately protective of water quality.

26          12.      The review of an NTMP for approval or denial by CAL FIRE is by state law  
27 conducted by a multi-agency Review Team of which the Regional Water Quality Control Board is a  
28 permanent standing member. During the review process all NTMPs undergo a field review for

1 adequacy and sufficiency of the proposed environmental protection standards, including water  
2 quality. Water Quality staff regularly participates and comments on these NTMPs, and the NTMP  
3 as finally approved is typically modified to address specific concerns raised by responsible agency  
4 representatives, including Water Quality.

5 13. The Board of Forestry and Fire Protection, the agency responsible for regulating the  
6 conduct of timber operations in California, studied the effectiveness of its rules for eight consecutive  
7 years, focusing on landscape features with potential to cause sediment discharge into watercourses  
8 and streamside shade canopy. The Monitoring Study Group found that "The rate of compliance  
9 with FPR's (Forest Practice Rules) designed to protect water quality and aquatic habitat is generally  
10 high, and that FPRs are highly effective in preventing erosion, sedimentation and sediment transport  
11 to channels when properly implemented."

12 14. There are substantial questions of law and fact regarding the disputed action.

13 15. The Categorical Waiver was not properly noticed because many individuals,  
14 including some of my clients, were not notified by the Regional Board of the Categorical Waiver  
15 and how it might affect their NTMPs.

16 16. The Categorical Waiver, and the additional conditions it requires, is not supported by  
17 evidence. There was not sufficient evidence presented to indicate additional conditions over and  
18 above those required by the 2004 Categorical Waiver were necessary to reasonably protect water  
19 quality.

20 17. The Categorical Waiver exceeds the Regional Board's authority by interfering with  
21 CAL FIRE's regulatory authority to dictate timber harvest operations.

22 18. The Categorical Waiver includes conditions and requirements which impose  
23 tremendous burdens on timber harvest without being necessary to ensure reasonable protection of  
24 beneficial uses.

25 19. The Categorical Waiver comes immediately before and without consideration of the  
26 Threatened and Impaired Rules being adopted by CAL FIRE, which are intended to protect, among  
27 other things, water quality.

28 I declare under penalty of perjury under the laws of the State of California, that the foregoing

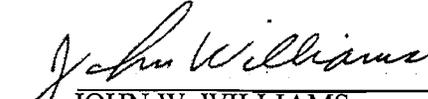
1 is true and correct.

2 Executed at Santa Rosa, California.

3

4 Dated: July 6, 2009

5

  
JOHN W. WILLIAMS

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