

Conditional Waiver No. 5 – Discharges from Silvicultural Operations

Conditional Waiver No. 5 is for discharges that originate from forest lands, which contain pollutants that can percolate to groundwater or runoff to surface waters. Discharges from forest lands include discharges resulting from timber operations and forest land management activities, and storm water runoff which can also transport pollutants from forest lands to surface waters and groundwater.

The following types of discharge not regulated or authorized under WDRs may be eligible for Conditional Waiver No. 5:

- Discharges of storm water runoff
- Discharges from timber harvesting projects
- Discharges from wildfire suppression and fuels management activities

These types of discharge can originate from one land owner/operator and have similar environmental settings and waiver conditions. Therefore, timber-related, or silvicultural, discharges were grouped together into one discharge classification. Silvicultural operations that comply with the waiver conditions are not expected to pose a threat to the quality of waters of the state.

Silvicultural operations can be significant sources of sediment, dissolved solids, nutrients, pesticides, hydrocarbons, and pathogens, which can adversely affect the quality of the waters of the state. Timber operations, such as timber harvesting and wildfire suppression and fuels management activities, may generate sediment and solids during harvesting and clearing activities and/or may include the composting of green wastes.

Storm water runoff can produce surface runoff that may transport pollutants from soil (e.g., sediment, dissolved solids, pesticides) and green wastes (e.g., nutrients, organics, pesticides) to surface waters. Storm water can also percolate and leach pollutants into underlying groundwater. Storm water runoff from forest lands is not subject to federal NPDES regulations.¹ However, storm water runoff from forest lands is subject to regulations in the state Water Code and may be regulated with WDRs, unless a waiver is issued. Silvicultural operations that properly manage their activities and wastes are not expected to pose a threat to the quality of waters of the state. Therefore, waiver conditions must require proper management and other measures to minimize or eliminate discharges of pollutants from silvicultural operations to waters of the state.

Timber operations on National Forest Service (NFS) lands in California are regulated by the U.S. Forest Service (USFS). The USFS is designated as the Water Quality Management Agency (WQMA) for silvicultural operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction,

¹ Code of Federal Regulations Title 40 sections 122.3(e)

and watershed management) on NFS lands.² The Regional Water Boards have agreed to waive the issuance of WDRs and the requirement to file RoWDs for USFS timber operations that may result in NPS discharges, provided that the USFS designs and implements its projects in accordance with the MMs/BMPs certified by the State Water Board and USEPA.³ Silvicultural operations on NFS lands must prepare environmental and decision documents pursuant to the National Environmental Policy Act (NEPA).

Timber operations on private and state lands in California are regulated by the California Board of Forestry (BOF) and California Department of Forestry (CDF). The BOF/CDF are jointly designated as the WQMA for timber operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction, and watershed management) on state and private forest lands.⁴ The State Water Board conditionally certified the *Water Quality Management Plan for Timber Operations on Nonfederal Lands*. This plan has not been certified by the USEPA. Timber operations on nonfederal lands must submit a Notice of Exemption, Notice of Emergency, Timber Harvest Plan (THP), or Non-industrial Timber Management Plan (NTMP) to the CDF for approval in accordance with the State-certified plan. The CDF is supposed to circulate THPs and NTMPs to the Regional Water Boards for comment on potential water quality impacts.

The Water Quality Management Plans that are administered by the USFS and BOF/CDF for timber operations include measures for the protection of water quality. However, in the event water quality protection measures are not fully implemented, the San Diego Water Board may still regulate silvicultural discharges by issuing individual or general WDRs to ensure water quality is protected.

The San Diego Water Board determined that delegating regulation of specific types of discharge to another public agency is consistent with the Basin Plan and in the public interest. In this case, owners/operators of silvicultural operations must obtain the appropriate approvals from the USFS or BOF/CDF to perform timber harvest or wildfire suppression and fuels management projects. As long as the discharges from forest lands do not have an adverse impact on surface water or groundwater quality, the San Diego Water Board will waive the requirements to file a RoWD and WDRs for these operations.

However, waiver conditions should be developed in order for members of the public, cities, counties, local agencies and organizations, and/or the San Diego Water Board to determine if discharges from silvicultural operations pose a threat to the quality of the waters of the state. If owners/operators of silvicultural operations are not in compliance with waiver conditions, they can be issued a Notice of Violation, and required to correct deficiencies and comply with waiver conditions in order to be waived under Conditional Waiver No. 5. If the owner/operator of a silvicultural operation violates waiver

² In accordance with the 1981 MAA between the USFS and State Water Board

³ Certified MMs/BMPs can be found in the USFS's document entitled *Water Quality Management Plan for National Forest System Lands in California*.

⁴ In accordance with the 1988 MAA between the BOF/CDF and State Water Board

conditions, the San Diego Water Board can terminate the conditional waiver for the discharge and regulate the discharge with individual WDRs and/or take other enforcement actions.

In order to be eligible for Conditional Waiver No. 5, discharges must comply with certain conditions to be protective of water quality. The waiver conditions applicable to discharges from silvicultural operations include the following:

5.I.A. General Waiver Conditions for Silvicultural Operations

5.II.A. Specific Waiver Conditions for Timber Operations on Federal Lands

5.II.B. Specific Waiver Conditions for Timber Operations on Non-Federal Lands

Discharges from silvicultural operations that comply with the general and specific waiver conditions in Conditional Waiver No. 5 are not expected to pose a threat to the quality of waters of the state.

5.I.A. General Waiver Conditions for Silvicultural Operations

1. Silvicultural operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction, and watershed management) must minimize or eliminate the discharge of any pollutants that could adversely affect the quality or beneficial uses of waters of the state.
2. Silvicultural operations (including timber harvesting, timber management, vegetative manipulation, fuels management, road construction, and watershed management) must comply with any federal, state, or local, state, and federal permitting, licensing, or certification requirements and applicable regulations and ordinances.
3. The San Diego Water Board and/or other local regulatory agencies must be allowed reasonable access to the site in order to perform inspections and conduct monitoring.

5.II.A. Specific Waiver Conditions for Timber Operations on Federal Lands

1. The State Water Board and US Environmental Protection Agency (USEPA) must continue to certify the *Water Quality Management Plan for National Forest System Lands in California*.
2. The US Forest Service (USFS) must maintain: (a) a water quality program consistent with the Basin Plan, and (b) a program to monitor the implementation and effectiveness of management measures (MMs) and/or best management practices (BMPs).
3. The USFS must provide the San Diego Water Board copies of the environmental and decision documents containing information documenting that a multi-disciplinary review of the timber harvest proposal has been conducted, and the proposed MMs/BMPs and additional control measures that will be implemented to protect water quality.
4. The USFS must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.

5.II.B. Specific Waiver Conditions for Timber Operations on Non-Federal Lands

1. The State Water Board must continue to certify the *Water Quality Management Plan for Timber Operations on Nonfederal Lands*.
2. Timber operations within 150 feet of existing structures (i.e., “FireSafe” treatments) that are conducted pursuant to a Notice of Exemption approved by the California Department of Forestry (CDF) are not required to provide notice to the San Diego Water Board, but must keep a copy of the approved Notice of Exemption for at least one year (from the approval date) on site for inspection.
3. For timber operations approved by the CDF pursuant to a Notice of Exemption or Notice of Emergency, a copy of the notice must be provided to the San Diego Water Board.
4. For timber operations with a Timber Harvest Plan (THP) or Non-industrial Timber Management Plan (NTMP) approved by the CDF, a copy of the Plan must be provided to the San Diego Water Board.
5. Owners/operators of non-federal forest lands must submit a Notice of Intent or technical and/or monitoring program reports when directed by the San Diego Water Board.