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December 14, 2009

Subject: Comments concerning the SWRCB Forest Plan WQMP strategy

To: Gaylon Lee, P.G.
Forest Activities Program Manager
Division of Water Quality
State Water Resources Control Board
1001 I Street
P.O. Box 2231
Sacramento, CA 95812

Dear Gaylon:

The following comments are submitted in response to the USFS/Water Boards WQMP Project and the questions laid out in the Notice for the Public Workshop held on November 30, 2009. As you know, I attended that workshop and shared our Center's perspective that the U.S. Forest Service is not currently managing forest activities on national forest lands within California in a fashion that prevents degradation of water quality.

Please look closely at the attached photos documenting clear examples of significant water quality and watershed resource values that are evidence of the need for the State Water Board to stop accepting excuses or assurances from the U.S. Forest Service and to actively enforce water quality protective standards and thresholds.

Background
As an ex-U.S. Forest Service employee who worked for 13 years on national forest lands in a variety of positions, I have strong friendships with Forest Service employees and considerable respect for the challenges that they face as they plan, implement, and assess the impacts of project activities on national forest lands. For the past 20 years since leaving the Forest Service, I have served as the executive director for our non-profit environmental watchdog organization. I have personally spent thousands of days in the national forest lands of the Sierra Nevada region, monitoring timber sales, herbicide projects, livestock grazing, shredding, prescribed burning, and other national forest activities.

Key comments

Over the three decades I have observed national forest activities being implemented on federal lands within California, I have frequently seen highly visible water quality degradation taking place -- primarily from (1) inadequate road maintenance and poorly designed roads; (2) widespread logging and fuel treatment activities that cumulatively disturb hundreds to thousands of acres across a watershed; (3) livestock grazing concentrated in wet meadows or along riparian areas; and (4) from extensive herbicide treatments including aerial applications.

Despite consistent claims by Forest Service staff that all planned BMPs have been implemented, I have nevertheless personally observed soil washing off into drainages from logging and road impacts, streambanks significantly denuded, sloughed, and chiseled resulting in sedimentation and the widening/warming of stream waters, as well as areas on hillsides that reveal erosion after herbicide applications have killed off groundcovers and brush. BMPs in current Forest Service project are primarily either generalized policies that are not verifiable through follow-up monitoring, or the BMPs are simply based upon visual observations that are highly judgmental.

Despite assurances from Regional and individual Forest officials, the truth is that national forest activities -- in particular road management and livestock grazing -- have resulted in increased water quality and watershed impacts on national forest lands over the past decade or they have at least failed to be implemented in a manner that reduces water quality contamination and watershed degradation.

IT IS ESSENTIAL THAT THE STATE WATER BOARD MOVE EFFECTIVELY TO BEGIN TO REQUIRE INDEPENDENT, VERIFIABLE WATER QUALITY MONITORING AND ASSESSMENT OF BMP EFFECTIVENESS FOR MAJOR ACTIVITIES ON NATIONAL FOREST LANDS THAT POSE THE HIGHEST POTENTIAL FOR NEGATIVE IMPACTS TO WATER RESOURCES.

- **The track record to date clearly and inarguably shows that USFS implementation of BMPs has been insufficient to comply with California's water quality standards.**

- **USFS activities have been shown to have significant adverse effects on water quality and beneficial uses of water.**

- **Given the known and potential significant effects, CSERC believes that an EIR/EIS is needed for both the adoption of a new WQMP and any adoption of approval instruments (waivers, permits) by the Water Boards.**

- **The USFS's BMP monitoring program is deficient and legally inadequate. It relies mostly upon visual observations. It has not been sufficiently peer-reviewed, and it has other major shortcomings. The USFS program of BMP monitoring clearly fails to demonstrate compliance with water quality standards.**

- **At the very least, the minimum requirements for any programmatic waivers/permits should be based on the following:**

(a) All existing procedural and substantive state requirements must remain in force (i.e., all

waste discharge prohibitions, narrative and numeric objectives, anti-degradation objectives and policies, and implementation policies must continue to apply to all USFS discharges. USFS BMPs are <u>not</u> the standards the BMPs and must <u>not</u> become the standards);
(b) There need to be much better mandatory monitoring and reporting requirements for USFS activities;
(c) There need to be substantive and detailed requirements for timely corrective action when problems are identified, and these requirements need to have "teeth" to ensure that they are followed;
(d) The Regional Water Boards need to retain the authority to require a Report of Waste Discharge for any USFS activity. Specifically, Regional Water Board staff should have clear authority to remove any USFS activity from coverage under any state waiver/permit whenever the Regional Water Board Executive Officers determine that a potential threat exists and the activity should be considered for a project-specific waiver/permit.

<u>Specific answers to questions posed by the SWRCB</u>:

Among the several types of activities that take places on NFS lands, which ones are best handled by a statewide approach and should be addressed in a statewide WQMP and which ones should not?

Two major national forest activities have potential to be effectively managed through a statewide approach BUT ONLY IF THE STATEWIDE APPROACH IS BASED UPON STRINGENT STANDARDS, STRICT ENFORCEMENT, CONSISTENT MONITORING OF MEASURABLE INDICATORS OR WATER QUALITY SAMPLES, AND FINALLY, SEVERE CONSEQUENCES FOR VIOLATIONS. Those two national forest activities are (1) road management practices/thresholds for sedimentation or degradation and (2) livestock grazing on national forest lands. As emphasized above, those two forest activities are only appropriate for a statewide approach if that WQMP has consistent, effective, stringent standards, consistent monitoring of measurable indicators, and severe consequences for violations. Otherwise, a statewide approach will simply result in a partnership of favoritism with the SWRCB continuing to allow a fellow agency (the USFS) to have good intentions that simply fail to be met by on-the-ground policies, practices, monitoring, or consequences.

Which national forest activities need immediate attention, and which can be deferred for a few years?

Watershed and water quality impacts from logging/fuels management activities are so widespread and so cumulatively significant, those projects need immediate attention. Likewise, livestock grazing impacts and the major negative impacts from poorly constructed, poorly maintained roads across the national forests within California are impacts that require immediate, focused, and assertive attention.

Impacts to water resources from herbicide treatments and to a lesser degree from prescribed burning are impacts that may cumulatively add to the significance of other national forest activities, but generally herbicide treatments are limited to projects each year on only a few forests across the system and generally prescribed burning produces moderately low to low levels of watershed disturbance or water quality degradation. Thus, herbicide treatments and prescribed burning may not require immediate attention.

What pollutants besides sediment and thermal pollution are common or likely enough that they should be addressed in a statewide WQMP?

Fecal coliform, total coliform, and e coli are measurable pollutants either caused solely by livestock while grazing on national forest lands throughout the state of California or excessive levels of those contaminants are exacerbated by livestock wastes in combination with other contributors. With these comments, CSERC notes that our Center will be providing to the SWRCB in coming months clear evidence of water quality violations caused by livestock grazing contamination. Such contamination should be identified (wherever it occurs ton national forest lands) through persistent water quality sampling and reporting -- especially where livestock is allowed to graze directly along miles of mountain streams and riparian areas so as to cumulatively contribute measurable levels of pollutants into the receiving waters.

Besides certain forest road segments, what other types of "legacy" problems sites exist on NFS land and which should be addressed by the WQMP?

In addition to widespread forest road segments that continue to discharge sediment into forest streams, there are also many scattered damaged meadows where headcuts, downcuts, and widespread erosion are undermining the integrity of wet meadows that are important components of the overall watershed systems on national forest lands in the mountains of the state. In particular, some meadow areas contain major gullies and headcuts that are lowering the water table and destroying the capability of wet meadows to capture and slowly release snowmelt or spring rains.

The SWRCB document states that the USFS currently conducts statewide randomized programmatic monitoring of whether pollution control practices have been implemented as specified and have been effective in preventing or minimizing the generation of NPS discharges.

CSERC respectfully charges that the USFS does NOT currently conduct statewide randomized monitoring in such a manner that water quality sampling is actually implemented through field measurements, or that monitoring is done in a manner that Region or Forest standards and guidelines are accurately measured post projects. For example, livestock grazing takes place across the Region each year and each year the Region produces a nice-appearing list of all the allotments where monitoring supposedly took place and where Allotment Management Plan standards were met. That apparent monitoring is almost completely without any true value when it comes to assessing impacts of grazing on water quality.

In reality, much of the so-called "monitoring" is simply measuring forage utilization (how much grass was removed from a few scattered meadow transects spread out across literally 10,000 acres or more of rugged mountainous terrain). Those forage utilization measurements are even more invalid or suspect because on many forests, the Forest Service relies upon grazing permittees (who have no scientific training and have only minimal understanding of forage measurement protocols) to do the actual self-monitoring on their own allotments. Asking the livestock permittees as to whether or not they have violated their own permits is a far stretch from having accurate monitoring that the State can rely upon... especially since the Forest Service rarely if ever has actually monitored water quality in areas where livestock grazing takes place over two to four months of the summer season.

Furthermore, the Forest Service routinely reports that streambank monitoring and riparian vegetation monitoring are done on national forests within California. Yet on the Stanislaus National Forest and reportedly other national forests, such monitoring is either not actually done at all or it is done only at a tiny fraction of one percent of meadows with streams. On the Stanislaus National Forest, a Forest Land Management Plan standard and guideline requires streambanks to be managed for 90% of natural streambank stability... but in 19 years of the Forest Plan, the Stanislaus Forest has NEVER developed streambank sampling protocols to actually monitor its clear requirement.

The above examples underscore that while the Regional staff of the Forest Service can provide the SWRCB with extensive lists of allotments that meet monitoring standards (for forage utilization) or claim that streambanks and riparian browse have been monitored and meet standards, in reality the Forest Service has neither the staffing nor the funding to allow for more than a tiny fraction of monitoring to actually be done. MOST IMPORTANT, NO WATER QUALITY SAMPLING IS DONE MOST YEARS ON ENTIRE NATIONAL FORESTS WHEN IT COMES TO LIVESTOCK GRAZING IMPACTS ON WATER RESOURCES. The same is true with sedimentation caused by roads, by logging treatments, or by shredding, discing, or other fuels reduction management projects.

It is essential that in any updated, revised, improved WQMP for USFS activities on lands with California, that the SWRCB ensure that replicable accurate water quality monitoring and streambank/riparian area monitoring be done both randomly and where there is the highest potential for violations to occur on each national forest.

Stakeholder Committee

It was frustrating at the November 30th workshop session to see what appeared to be a desire by the SWRCB to create a "Stakeholder Committee" that would be so dominated by the very dischargers that stand to gain the most from delaying effective monitoring and to gain the most from opposing a strong water quality management plan.

Should a police department set up a Stakeholder Committee of child molesters, drug dealers, and robbers when strategizing where to enforce existing laws and how to accurately protect community citizens? Should any enforcement agency provide an opportunity for those creating the resource problem to significantly influence how regulations should be enforced or which should "not be given immediate attention?" It appears as if the collegial relationship between the U.S. Forest Service and the SWRCB extends even further so that the SWRCB is looking for guidance and input from the timber industry, grazing industry, the off-road-vehicle motorized advocacy groups, and other dischargers as well as the USFS that is so closely aligned with these user groups.

Three or four years ago, you and other Water Board staff promised the conservation community at public meetings that a statewide waiver program was being developed to effectively reduce water quality contamination by livestock grazing within California. Apparently political pressure surfaced and that entire program disappeared without the promised results.

Last year the Water Board put forward a strong program proposing to reduce contamination from septic systems and to set strong policies in order to proactively get ahead of septic system contamination of water resources. Strong political opposition surfaced and now the Water Board has caved in and is apparently doing nothing to move septic system regulations forward. Will the creation of a Stakeholder Committee with representation from the OHV motorized lobby, the timber industry, the grazing industry, and water agencies lead to similar political pressure to weaken or eliminate any effective improvements in a USFS WQMP? The outward appearance is that the Water Board is already so aligned with the friendly representatives of the Forest Service that little teeth is likely to be contained in any statewide permit/waiver. That appearance of weak intent is further underscored by the current make-up and slant of the Stakeholder Committee.

Despite the above concerns, our Center commits to working to the extent possible with the SWRCB to provide accurate information and field-based testimony in order to assist the Board in significantly improving the WQMP with the U.S. Forest Service if that is actually the true intent of the Board.

Please look at the attached photos of national forest activities that have caused visually obvious water quality impacts as documented by CSERC staff biologists and myself.

John Buckley, executive director

(The photo at right and on the following three pages show grazing contamination of water, stream bank damage, and clear evidence of riparian impacts on Forest Service lands from livestock.)

This photo of the North Fork Mokelumne River near Bloomfield Meadow shows an area dominated by weeks of cattle grazing intensively along the streamside area and adjacent meadows -- concentrating nitrogen in the contaminated water.

Logging and fuels projects also denude soil, loosen topsoil, and create erosion.

Then there is all the watershed and soil damage caused by OHV use.


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The particularly bad OHV route shown below reveals intensive watershed impacts.

Then there are all the widespread problems caused by national forest roads -- which presently face a road maintenance budget shortfall of $55 million just on the Stanislaus Forest alone. This rut flows off into the drainage shown at the right and on down to a stream.

This road sheds sediment 200 feet down slope into the South Fork Stanislaus.

This road blowout went without repairs or stabilization for more than four years due to a lack of maintenance dollars. Yet the Stanislaus Forest has actually opened up more roads to motorized use during the time of inadequate maintenance funding, rather than closing roads due to its inability to manage its system. Overall, more than 6,000 miles of roads exist within the Stanislaus Forest, but the Forest Service claims that it only legally allows use on 2,700 miles. However, it does not stop motorized use on another 1,000 miles of roads that exist without public easement rights, but which the Forest has left open to use for decades.

Just in terms of road impacts to water quality and watershed resources, the national forest lands within California create incredibly high levels of sedimentation, stream bank damage, and harm to aquatic species.

Will the State Water Board move past the inaccurate assurances of USFS officials to actively monitor and enforce regulations to effective protect water quality?