

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ORDER NO. R5-2010-_____

RENEWAL OF CONDITIONAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
FOR DISCHARGES RELATED TO TIMBER HARVEST ACTIVITIES

The California Regional Water Quality Control Board, Central Valley Region, (Central Valley Water Board) finds that:

1. California Water Code (CWC) Section 13260(a) requires that any person discharging waste or proposing to discharge waste within any region that could affect the quality of the waters of the State, other than into a community sewer system, shall file with the appropriate regional water board a report of waste discharge containing such information and data as may be required by the board and the first annual fee applicable to waste discharge requirements, unless the board waives such requirement;

2. CWC Section 13269(a) provides that a regional water board may waive the requirements to submit a report of waste discharge and to obtain waste discharge requirements as to a specific discharge or specific type of discharge, if the board determines that the waiver is consistent with any applicable water quality control plan and such waiver is in the public interest. CWC Section 13269 further provides that any such waiver of waste discharge requirements shall be conditional, may not exceed five years in duration, and may be terminated at any time by the board;

3. CWC Section 13269 includes the following provisions:

- The waiver shall include the performance of individual, group, or watershed-based monitoring, unless the board determines that the discharges do not pose a significant threat to water quality.
- Monitoring requirements shall be designed to support the development and implementation of the waiver program, including, but not limited to, verifying the adequacy and effectiveness of the waiver's conditions. In establishing monitoring requirements, the board may consider the volume, duration, frequency, and constituents of the discharge; the extent and type of existing monitoring activities, including, but not limited to, existing watershed-based, compliance, and effectiveness monitoring efforts; the size of the project area; and other relevant factors.
- Monitoring results must be made available to the public.

4. The Central Valley Water Board, on 30 January 2003, adopted Resolution R5-2003-0005 which established a conditional waiver of waste discharge requirements for discharges related to timber harvest activities in the Central Valley Region as set forth in Attachment A (Waiver) of that Resolution.

5. The Central Valley Water Board, on 28 January 2005, adopted Resolution R5-2005-0004 renewing the Waiver until 30 June 2005;

6. The Central Valley Water Board, on 28 April 2005, adopted Resolution R5-2005-0052 which renewed the Waiver until 31 March 2010, and included a Monitoring and Reporting Program.

7. CWC Section 13269 authorizes the Central Valley Water Board to include as a condition of a waiver the payment of an annual fee established by the State Water Resources Control Board (State Water Board). At the time of this hearing the State Water Board has not established annual fee regulations with respect to timber harvest activities. However, the first annual fee for waste discharge requirements under section 13260 must be paid unless a regional water board waives the requirement to submit a report of waste discharge. Once a discharger enrolls in the Waiver, subsequent annual fees would only be due in accordance with a State Water Board fee schedule for timber harvest activities.

8. The Central Valley Water Board has adopted the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (4th Edition 1998) and the Water Quality Control Plan for the Tulare Lake Basin (2nd Edition 1995) (Basin Plan), including subsequent amendments, that establishes beneficial uses, water quality objectives, waste discharge prohibitions, and implementation policies that apply to waters of the State and discharges to waters of the State within the Central Valley Region;

9. Pursuant to the Basin Plan and State Board Plans and Policies, including State Water Board Resolution No. 88-63, the existing and potential beneficial uses of waters in the Central Valley Region include:

- a. Agricultural Supply (AGR)
- b. Aquaculture (AQUA)
- c. Preservation of Biological Habitats of Special Significance (BIOL)
- d. Cold Freshwater Habitat (COLD)
- e. Commercial and Sportfishing (COMM)
- f. Estuarine Habitat (EST)
- g. Freshwater Replenishment (FRSH)
- h. Ground Water Recharge (GWR)
- i. Industrial Service Supply (IND)
- j. Migration of Aquatic Organisms (MIGR)
- k. Municipal and Domestic Supply (MUN)
- l. Navigation (NAV)
- m. Hydropower Generation (POW)
- n. Industrial Process Supply (PRO)
- o. Rare, Threatened, or Endangered Species (RARE)
- p. Water Contact Recreation (REC-1)
- q. Non-contact Water Recreation (REC-2)
- r. Shellfish Harvesting (SHELL)
- s. Spawning, Reproduction, and Development (SPWN)
- t. Warm Freshwater Habitat (WARM)
- u. Wildlife Habitat (WILD);

10. The Basin Plan contains water quality objectives developed to protect the above-listed

beneficial uses of water. Eligibility criteria, Prohibitions, and Conditions contained in this Order implement these water quality objectives. Compliance with water quality objectives will protect the beneficial uses listed in the above paragraph;

11. In 1981, the State Water Board: (a) certified a plan entitled “Water Quality Management for National Forest System Lands in California” that was developed and submitted by the United States Department of Agriculture, Forest Service (USFS); (b) designated the USFS as the Water Quality Management Agency (WQMA) for specified activities on National Forest System lands in California that may result in non-point source discharges, including timber management, vegetative manipulation, fuels management, road construction and watershed management; and (c) executed a Management Agency Agreement with the USFS for the purpose of implementing the certified plan and WQMA designation;

12. Pursuant to Section 208 of the federal Clean Water Act, the United States Environmental Protection Agency (USEPA) has approved the State Water Board’s certification of the USFS’s water quality management plan, and the State Water Board’s certification of the practices therein as “best management practices” (BMPs);

13. The Management Agency Agreement between the State Water Board and the USFS contemplates that the Central Valley Water Boards will waive issuance of waste discharge requirements for USFS timber harvest activities that may result in non-point source discharges, provided that the USFS designs and implements its projects to fully comply with State water quality standards;

14. The California Department of Forestry and Fire Protection (CAL FIRE) and the California Board of Forestry (BOF) regulate timber harvest activities on nonfederal lands in accordance with the Z’berg-Nejedly Forest Practice Act (Public Resources Code, Section 4511 et seq.) and the California Forest Practice Rules (Title 14, California Code of Regulations, Section 895 et seq.);

15. In 1988, the State Water Board: (a) conditionally certified the “Water Quality Management Plan for Timber Operations on Nonfederal Lands” which included those California Forest Practice Rules selected as BMPs and the process by which those rules are administered; (b) designated CAL FIRE and the BOF as joint WQMAs; and (c) executed a Management Agency Agreement with CAL FIRE and BOF for the purpose of implementing the certified plan and WQMA designations;

16. The Management Agency Agreement between the State Water Board and CAL FIRE/BOF required a formal review of the California Forest Practice Rules and administering processes no later than six years from the date of certification. To date, that review has not occurred;

17. The USEPA has not approved the State Water Board’s certification of the California Forest Practice Rules and administering processes for regulation of timber harvest activities on nonfederal lands in California;

18. On 6 July 1999, joint recommendations developed by staffs from four regional water boards (Lahontan, North Coast, Central Coast, Central Valley) were submitted to the BOF. Those recommendations detailed numerous amendments needed to the Forest Practice Rules in order to provide better protection for water quality and beneficial uses of water. To date, many of those

recommendations have not been adopted by the BOF;

19. The Waiver addresses the joint recommendations by including conditions in addition to the requirements of the Forest Practice Rules to assure that timber harvest activities will be protective of waters of the state. These conditions include: The discharger must comply with all provisions of the Basin Plans, more stringent criteria for Category 1, Mandatory Equipment Limitation Zone for Class III and IV watercourses, mandatory retention of shade trees, notification of pesticide applications, hiring of registered Civil Engineer when certain conditions exist, and must follow recommendations made by the Central Valley Water Board staff during Pre-Harvest Inspections;

20. State Water Board Resolution 68-16 (“Statement of Policy with Respect to Maintenance of High Quality Waters in California”) requires the Central Valley Water Board to regulate discharges of waste to waters of the state to achieve highest water quality consistent with maximum benefit to the people of the State. It further requires that the discharge meet waste discharge requirements which will result in the best practicable treatment or control of the discharge necessary to assure that pollution or nuisance will not occur and that the highest water quality consistent with maximum benefit to the people of the State will be maintained. This Waiver is consistent with Resolution 68-16 because it requires compliance with applicable water quality control plans, prohibits the creation of pollution or nuisance, and sets forth conditions that require dischargers to implement additional management practices (beyond those required in the Forest Practice Rules and USFS BMP guidance manuals) to assure protection of beneficial uses of waters of the state and maintain the highest water quality consistent with maximum benefit to the people of the State.

21. The Central Valley Water Board, acting as the lead agency for this project under the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) (CEQA), conducted an Initial Study in 2002 in accordance with Title 14, California Code of Regulations (CCR), Section 15063;

22. The Central Valley Water Board adopted a negative declaration pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code 21000 et seq.) on 30 January 2003. This action to renew the Waiver does not require preparation of a subsequent or supplemental environmental document pursuant to Title 14 California Code of Regulations (CCR) Sections 15162 or 15163. There is no evidence to indicate that substantial changes are proposed for the project, that substantial changes have occurred with respect to the circumstances of the project, or that there is new information of substantial importance with respect to the project, as described in Title 14 CCR Section 15162(a);

23. The Waiver (Attachment A) is in the public interest as described below:

- (a) Timber harvest activities are primarily regulated by other agencies, including CAL FIRE and the USFS. The Central Valley Water Board does not approve timber harvests, but it does have authority to require compliance with the California Water Code;
- (b) Without the Waiver, timber harvest activities would continue under authority of those other agencies, but such activities may not be subject to appropriate water quality protective conditions;

- (c) Without the Waiver, the Central Valley Water Board could regulate a smaller percentage of timber harvest activities in the Region due to limited staff resources, but with the Waiver, timber harvest activities acting pursuant to the Waiver are subject to enforceable conditions;
- (d) The Waiver contains conditions that require compliance with the applicable Basin Plan, including applicable water quality objectives;
- (e) The Waiver contains conditions requiring compliance with monitoring and reporting programs that will assist in the protection of water quality and in verification of the adequacy and effectiveness of Waiver conditions;
- (f) Compliance with the conditions of the Waiver will result in protection of water quality;
- (g) The Waiver does not approve of or authorize pollution.
- (h) The Waiver conditions are subject to enforcement pursuant to CWC section 13350 in the same way as enforcement of waste discharge requirements;
- (i) The Waiver is an effective mechanism given staff resources to regulate a large number of potential discharges and allows staff to maximize its field presence;
- (j) The Waiver allows staff to continue to participate in the pre-harvest review of proposed timber activities which provides staff the ability to require implementation of protective measures beyond those required by CAL FIRE and the USFS for the most critical timber operations.
- (k) The State Water Board, on 22 January 2004 and in Order No. WQO 2004-0002, affirmed the Central Valley Water Board Waiver and stated: "The Waiver includes specific criteria to ensure compliance with requirements of the Basin Plan and to prevent discharges that may substantially impact water quality. Further, the Regional Board's actions were consistent with State Board policies and procedures and the terms of the Waiver do not exceed the Regional Board's statutory authority."
- (l) The Waiver has been in effect since 2003, and based on the Central Valley Water Board's experience, the Waiver has resulted in increased use of management practices to protect waters of the state such as the inclusion of staff recommendations during field review of timber harvest plans and the inclusion of additional management practices in submittals not field-reviewed by staff;
- (m) The MRP has been in effect since mid-2005, and based on the Central Valley Water Board's experience, the MRP has resulted in accelerated application of management practices to protect waters of the state once failures or potential failures have been identified.
- (n) The Waiver, given limited Central Valley Water Board staff resources, provides a framework that most effectively utilizes resources to regulate discharges of wastes.

24. The Waiver is consistent with applicable water quality control plans as it requires compliance with the Basin Plan, including applicable water quality objectives, prohibits the creation of pollution or nuisance, and includes eligibility criteria and conditions to protect waters of the State.

25. The Waiver requires compliance with monitoring conditions consistent with the amendments to CWC Section 13269.

26. As described in the administrative record, the adoption of individual waste discharge requirements for all timber harvest activities in the Central Valley Region is not feasible at this time. The Central Valley Water Board receives for review more than 2000 timber harvest documents annually. Given the number of Central Valley Water Board staff and other factors, including the timing of the CAL FIRE timber harvest approval process and the time needed to adopt waste discharge requirements, it is not feasible for the Central Valley Water Board to adopt many individual waste discharge requirements in a year. General waste discharge requirements on, for example, a watershed-by-watershed approach, would also take a significant amount of time given the large number of watersheds and sub-watersheds in the Region. Thus, without the Waiver, most timber harvest activities would not be subject to any regulation under the California Water Code. Waste discharge requirements do not provide identifiable benefits over this Waiver because the Waiver contains essentially the same conditions that would be included in waste discharge requirements, such as the requirement to comply with water quality control plans, and the Waiver is enforceable to the same extent as waste discharge requirements. The adoption of waste discharge requirements, however, is not precluded because pursuant to CWC Section 13269, a waiver may be terminated at any time without cause.

27. The Central Valley Water Board has given notice of the renewal of the Waiver to all known dischargers and other interested persons;

28. The Central Valley Water Board conducted a public hearing on ___March 2010, in Rancho Cordova, California, and considered all testimony and evidence concerning this matter;

IT IS HEREBY ORDERED:

1. Based on the findings set forth in this Order and the administrative record for this matter, the Central Valley Water Board finds that the renewal of a waiver of waste discharge requirements for discharges related to timber harvest activities as set forth in the Attachments to this Order, which contain eligibility criteria, prohibitions, and conditions to assure consistency with applicable water quality control plans, and monitoring conditions, is in the public interest.

2. The Central Valley Water Board, based on findings set forth in this Order and the administrative record for this matter, including the information contained in the adopted Negative Declaration, finds that the renewal of the “Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities” will not have a significant impact on the environment;

3. The Central Valley Water Board finds that the “Monitoring and Reporting Conditions” for dischargers seeking enrollment under the Waiver as set forth in Attachment B and the “Implementation, Forensic and Effectiveness Monitoring and Reporting Program No. R5-2010-XXXX in Attachment C are consistent with CWC Section 13269(a)(2);

4. The Central Valley Water Board, based on the findings set forth in this Order and the administrative record, finds that it is not necessary at this time to adopt individual or general waste discharge requirements for waste discharges related to timber harvest activities that meet the eligibility criteria specified in the Waiver and which are conducted in accordance with the conditions specified in the Waiver.

5. The Central Valley Water Board, based on the findings set forth in this Order and the administrative record for this matter, hereby conditionally waives the requirement to obtain waste discharge requirements as set forth in Attachment A; waives the requirement to submit a report of waste discharge for Waiver Categories 1, 2 and 5; and adopts the “renewed” Waiver as set forth in Attachment A, the General Monitoring and Reporting Conditions as set forth in Attachment B, and the Implementation, Effectiveness and Forensic Monitoring and Reporting Program as set forth in Attachment C.

6. Dischargers currently enrolled under Categories 1, 2 and 5 of Waiver Order No. R5-2005-0052 shall continue to be covered under the Waiver, without re-enrolling.

7. Dischargers currently enrolled under Categories 3 and 4 of Waiver Order No. R5-2005-0052 shall continue to be covered under the Waiver until **[insert date 180 days after Board issuance of the Order]** unless coverage is terminated earlier. In order to obtain Waiver coverage under this Order beyond **[insert date 180 days after Board issuance of the Order]**, Category 3 and 4 Dischargers must submit a report of waste discharge as described in Attachment A. Waiver coverage will automatically terminate for all Dischargers that do not re-enroll before **[insert date 180 days after Board issuance of the Order]**.

8. Dischargers enrolling or re-enrolling under Categories 3 or 4 of the Waiver shall submit a fee with the report of waste discharge, as described in Attachment A.

9. If the State Water Board establishes an annual fee schedule for waivers of waste discharge requirements for discharges related to timber harvest activities, all Dischargers shall pay the applicable annual or enrollment fees as a condition of maintaining coverage under the Waiver.

10. The discharge of any waste not specifically regulated by the Waiver is prohibited unless the discharger complies with CWC Section 13260(a) and the Central Valley Water Board either issues waste discharge requirements pursuant to CWC Section 13263 or an individual waiver pursuant to CWC Section 13269 or, in the case of a discharge that does not create or threaten a condition of pollution or nuisance, the time frames in CWC Section 13264(a) have elapsed;

11. This Waiver shall not create a vested right and all such discharges shall be considered a privilege, as provided for in CWC Section 13263;

12. Pursuant to CWC Section 13269, this action waiving the issuance of waste discharge requirements for certain specific types of discharges: (a) is conditional, (b) may be terminated at any time, (c) does not permit an illegal activity, (d) does not preclude the need for permits which may be required by other local or governmental agencies, and (e) does not preclude the Central Valley Water Board from administering enforcement remedies (including civil liability) pursuant to the California Water Code;

13. The Executive Officer or Central Valley Water Board may terminate the applicability of the Waiver described herein to any timber harvest activities at any time;

14. In compliance with CWC Section 13269, the Executive Officer will continue to implement a program to evaluate compliance with the conditions pursuant to which waste discharge requirements are waived by this Order;

15. As part of the Waiver compliance effort, Central Valley Water Board staff will meet periodically with major stakeholders, including environmental groups, to address water quality related issues on a watershed basis;

16. A waiver of waste discharge requirements for a type of discharge may be superseded by the adoption by the Central Valley Water Board of specific waste discharge requirements or general waste discharge requirements for that type of discharge, or by an action of the State Water Board;

17. This renewed Waiver (Attachments A and B and Monitoring and Reporting Program No. R5-2010-_____) shall become effective on __ March 2010, and shall expire on __ March 2015, unless terminated or renewed by the Central Valley Water Board;

18. As provided by CWC Section 13350(a), any person may be civilly liable if that person in violation of a waiver condition or waste discharge requirements, 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;

19. The Central Valley Water Board may review the Waiver at any time and may modify or terminate the Waiver in its entirety or for individuals, as appropriate.

I, Pamela C. Creedon, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of an Order adopted by the California Central Valley Water Quality Control Board, Central Valley Region, on __ March 2010.

PAMELA C. CREEDON, Executive Officer