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Mr. Gaylon Lee
State Water Resources Control Board
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By email delivery

ForestPlan_Comments@waterboards.ca.gov.



Please reply to author, Bruce Whitcher, Bruce@CORVA.org

RE: Forested Lands Water Quality Plan – Comments

Dear Mr. Lee:

The following comments are submitted on behalf of the author as well as the California Off-Road Vehicle Association (CORVA). CORVA is a diverse group of outdoor recreationists who are extremely active in promoting the positive aspects of vehicular access on public lands. CORVA's main purpose is to work with the land managers for responsible off-highway vehicular access and recreation opportunities. Secondly, CORVA educates its membership on the constantly changing rules and regulations and promotes clean-up and trail maintenance projects.

We have reviewed the Initial Study and proposed Mitigated Negative Declaration (the "MND") for the Categorical Waiver of Waste Discharge Requirements for Nonpoint Source Discharges related to Certain Activities on National Forest System Lands in California (the "Waiver") prepared by the State Water Resources Control Board (SWRCB). While we recognize the importance of regulatory consistency within the United States Forest System (USFS), after completing our review, we contend that this analysis is inadequate and the draft Waiver will require preparation of an EIR.

The draft Waiver includes findings based on assumptions that are not adequately evaluated and should be explored in greater detail in an EIR. Furthermore the draft includes a number of statements that are unclear and should be clarified.

1. Draft Waiver Finding Number 4 is not supported by published research

The draft Waiver states that the findings of the Board are that "Motorized recreation is the fastest growing use of NFS lands. The increased power and capabilities of OHVs, together with population growth, has greatly increased both the range of and demand for motorized access. OHV recreation is the most rapidly increasing source of sediment discharges on NFS lands."

However recent studies of OHV use indicate that OHV use has been declining since 2004-2005. Cordell et al report that OHV participation decreased from a high of 51.6 million users in 2002-2003 to 44.4 million in 2005-2007¹, and that OHV sales peaked in 2004 and have declined since.² Furthermore the draft Waiver

¹ "Off-Highway Vehicle Recreation in the United States and its Regions and States: An Update National Report from the National Survey on Recreation and the Environment (NSRE), February, 2008, Table 3, page 15. <http://www.fs.fed.us/recreation/programs/ohv/IrisRec1rpt.pdf>

fails to take into account the effect of Forest Service Travel Management. Travel Management closed hundreds of miles of unauthorized inventoried motorized routes to use by the public and made very limited additions to the National Forest Transportation System, usually less than 100 miles per National Forest. Travel Management has resulted in a profound reduction of road and trail related environment impacts such as erosion and sedimentation since implementation in 2009-2010.

Declining OHV use, declining OHV sales and the effect of Travel Management contradict the Water Board finding that "OHV is the fastest growing source of sediment on National Forests".

In addition, the draft Waiver fails to consider the relative contribution of sedimentation and erosion from OHV trails in comparison to other sources such as the tens of thousands of miles of Forest roads. The draft Waiver should provide a statement that quantifies the relative contribution of OHV trails in comparison to other sources and this factor should be fully explored in an EIR.

2. The classification of routine annual OHV trail maintenance under draft Waiver Categories A and B should be clarified.

The draft Waiver Categories (page 25) state that "annual routine road and trail maintenance" is listed as a "low risk" or "Category A" activity. However "motor vehicle trails and their use" is classified as a "Category B" activity. Category B is "moderate risk" which requires application for coverage under the waiver.

We were informed that Category B, "OHV trails and their use" incorporates the Water Quality Management Handbook (WQMH) sections related to OHV trail "maintenance and operations" by reference, and that "OHV trail operations and maintenance" would in fact require inclusion under moderate risk Category B.³ This apparent contradiction should be explained in the draft Waiver..

We agree that annual routine road and trail maintenance should be included under Category A. As acknowledged in the draft Waiver, existing resource protections for routine annual road and trail maintenance under USFS Guidance are more than adequate. Routine annual maintenance is usually performed under a NEPA Categorical Exclusion.

Furthermore all Forest Service inventoried unauthorized motorized trails considered for addition to the Forest Transportation System recently underwent NEPA analysis as part of Travel Management. This analysis included site specific review by Forest Service hydrologists. Trails that were not up to standard were closed pending mitigation. Ongoing monitoring of OHV routes is required under Travel Management and for OHV State Division Grant funding. These protections are more than sufficient and additional conditions under Category B for routine road and trail maintenance are redundant.

3. The Initial Study Does Not Support a Mitigated Negative Declaration

The Initial Study Checklist, Section XVIII "Mandatory Findings of Significance", states that "activities that can be enrolled will not have a substantial adverse effect on human beings". We disagree and contend that the Waiver will have significant effects on human beings as well as

² "Off-Highway Vehicle Recreation in the United States and its Regions and States: An Update National Report from the National Survey on Recreation and the Environment (NSRE), February, 2008, page 13.

³ Response by email from Water Board staff, 6/30/2011: "The item you cite is implicitly referencing the USFS draft WQMH section (pages 110 -134) on OHV best management practices. Therefore, it applies to • Trail planning • Trail location and design • Trail construction and reconstruction • Watercourse crossings • Operations and maintenance • Wet-weather operations • Monitoring • Restoration of OHV-damaged areas • Concentrated-use area management."

potentially significant effects on the environment. These issues are significant enough that they should be explored in an EIR.

For example Section 2.13 of the associated WQMH includes onerous new requirements for routine road and trail maintenance in the form of erosion control plans. This will have the unintended consequence of severely limiting the amount of road and trail maintenance that can be performed on NFS lands with the limited resources that are available to the Forest Service. Provisions in this section and other new requirements in the WQMH will make the backlog of deferred road and trail maintenance on NFS lands far worse and will inevitably result in road and trail closures.

Degradation and eventual closure of trails due to lack of maintenance will have a significant adverse effect on the human environment that will affect not only local residents and the local economy but also visitors from outside the area who come to visit the National Forests. Displacement of use from closed facilities will affect neighboring parks and adjacent areas as users move elsewhere.

Discussion:

Activities previously conducted under a NEPA Categorical Exclusion include “repairing and maintaining roads, trails, and landline boundaries”. Forest Service NEPA provides examples such as “pruning vegetation, grooming the surface of a trail and cleaning culverts” (FSH 1909.33). Under the draft Waiver these activities would require extensive documentation with an erosion control plan. Although the intent is to reduce erosion, this new regulation is fraught with unintended consequences. For example the WQMH Section 2.13 states that an Environmental Control Plan must be reviewed by the Forest hydrologist and signed by the district Ranger. Forest hydrologists are rarely available on some districts making hydrologist approval a significant barrier to the implementation of routine maintenance projects which have little risk such as grooming a trail surface and cleaning culverts.

The WQMH states that activities exempt from the requirement to prepare an environmental control plan include “activities conducted under a categorical exclusion with no wheeled or tracked equipment”. This is a significant restriction of routine road and trail maintenance and imposes a requirement for wilderness trail maintenance techniques in non-wilderness areas. This section would potentially restrict the use of even wheelbarrows unless an environmental control plan is prepared. The draft WQMH includes guidelines for the use of mechanized equipment for trail maintenance.⁴ OHV rolling dips cannot be properly constructed without the use of wheeled and tracked equipment.⁵ We contend that the phrase “no wheeled and tracked equipment” should be removed from this section of the WQMH because routine road and trail maintenance cannot be reasonably performed without the use of wheeled and tracked equipment. As previously described, the requirement for an erosion control plan will add a substantial regulatory barrier for routine road and trail maintenance.

The Initial Study, p. 71,(c) states that covered activities are ongoing and will not be substantially changed by approval and implementation of the Waiver. We disagree and would like to point out that ongoing activities covered under the waiver must comply with Section 2.13 of the WQMH (p.46). This section states that an Erosion Control Plan must be prepared for activities such as road, bridge, trail and appurtenance construction and reconstruction and maintenance. Although preparation of an erosion control plan may be appropriate for moderate risk activities such as timber management and road management, it is unnecessary for low risk activities such as routine road and trail maintenance which are included in “low risk” Category A. The additional regulatory burden of preparing the Erosion Control Plan will significantly limit the amount of road

⁴ Draft WQMH, page 125.

⁵ Poff, R and Ryan, T: A Field Evaluation of the Use of Small Trail Tractors to Maintain and Construct OHV Trails on National Forests in California. USDA Forest Service, Pacific Southwest Region, 2001, page 5.

and trail maintenance that can be performed particularly given the limited resources available to the Forest Service.

4. The Draft Water Quality Management Handbook Section 2.13 Uses Inconsistent Terminology

Section 2.13 "Erosion Control Plans", introduces the undefined term "environmental control plan" midway through paragraph 2 on page 89. This term appears to be used interchangeably with "erosion control plan". We recommend defining one term and using it consistently throughout the section.

Conclusion:

The draft Waiver and Water Quality Management Handbook contain a number of areas that would benefit from clarification. In addition, we believe that we will be able to establish that the proposed measures are inadequate to avoid potentially significant effects that would be caused by the Waiver, thereby mandating preparation of an EIR or adding additional mitigation measures in the Mitigated Negative Declaration.