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Submitted via Email: commentletters@waterboards.ca.gov



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Mr. Charlie Hoppin
Chair, State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Dear Chair Hoppin:

The California Cattlemen's Association (CCA) and California Farm Bureau (Farm Bureau) appreciate the opportunity to comment on the Revised Draft Statewide Conditional Waiver of Waste Discharge Requirements for Nonpoint Source Discharges Related to Certain Activities on National Forest System Lands in California. CCA and Farm Bureau represent ranchers and livestock producers who graze cattle on nearly 34 million acres of public and privately owned rangelands and encompass California's \$1.68 billion beef industry.

Our organizations remain opposed to the draft waiver, including the changes that were made to this Revised Draft, which have further aggravated our concerns. These revisions further ensure an unnecessary project by project analysis for any U.S. Forest Service (USFS) activity regardless of staff, resources or time to actually manage that workload.

We preface our comments on the fact that the proposed waiver is not necessary for the Forest Service to comply with California state water quality laws. Currently, the Forest Service has an effective process to mitigate for potential water quality impacts as we address public complaints. Additionally, the State and Regional Boards still have the enforcement authority that they can use to address problem areas should any be found. As explained in more detail in our alternate proposal below, a waiver based solely on implementation of the USFS Water Quality Management Handbook (WQMH) would provide appropriate protections for water quality without hindering the State Board's enforcement authority or its involvement in the NEPA process.

CCA and Farm Bureau have the following specific concerns regarding the Revised Draft:

1) USFS Authority Must Be Maintained

CCA and Farm Bureau oppose the addition of the phrase “for purposes of enforcing the contract or permit” to #12 on p.27 (redline version). USFS must maintain sole authority to determine if permittees are in compliance with permit or NEPA terms and conditions. The USFS remains the agency responsible for managing forest lands to accommodate multiple-uses as directed by Congress.

2) Automatic Enrollment of Grazing Allotments Must be Maintained

We strongly oppose the elimination of the automatic enrollment provision for all grazing allotments. This is primarily based on the fact that the waiver would create an additional avenue for critics to challenge grazing and other multiple uses on National Forest lands. If the State Board is going to create this additional avenue, then providing regulatory coverage to allotments upon adoption of the waiver is critical.

The substituted language outlined in #12 on pp. 34-35 would determine an allotment’s coverage based on a risk assessment process is way too cumbersome to be feasible.

Retaining the automatic enrollment of allotments upon adoption of the statewide waiver is important to ensure regulatory certainty for allotments that have not received a NEPA review. Under the waiver, the NEPA process triggers USFS, state and regional water board consultation and we are concerned permittees grazing on these allotments will be left in an ambiguous and dangerous legal and regulatory grey area. We believe it would be unacceptable if permittees do not have regulatory certainty or coverage under the waiver while they are awaiting NEPA review.

3) Regional Board Must Respond in 30 Days

The sentence added to #4 on pp.36-37 should be removed. It is important to maintain a requirement in the waiver for the Regional Board to respond to the USFS within 30 days of review. The response should also be limited to approval or non-approval and not delay the USFS from completing action on the NEPA decision. Additionally, we support language in the original draft that considered the allotment enrolled unless the regional board contacted USFS within 30 days. As stated above, there are many challenges that already have slowed down the completion of range NEPA and adding additional burden indirectly through the adoption of a statewide waiver is unacceptable.

Unfortunately, our experience with implementation of the North Coast waiver thus far has confirmed many of our concerns about the regional board’s review significantly delaying the NEPA process. While we understand that there is a learning curve to any new program, the basis of this program is the USFS WQMP, which the USFS has been successfully implementing for many years. It is simply unnecessary for the regional board to spend an inordinate amount of time reviewing and proposing revisions to the USFS documents. In fact, we were assured this wouldn’t occur since the waiver was essentially a regulatory technicality for water quality protection that USFS was already successfully conducting.

4) Rescission Act Schedule Must Be Accurately Described

The Rescission Act schedule for grazing allotment NEPAs is under the sole authority of Congress. We remain immensely concerned and frustrated that the proposed waiver continues to

inaccurately discuss the Rescission Schedule, despite repeated corrections provided by both us and USFS. The revised language under #10 on page 34 is inaccurate as the State Board cannot require the USFS to follow the schedule, particularly since the schedule exists under Congressional authority.

Congress has specifically granted the USFS the ability to revise the Recessions Act schedule based on actual results and subject to Congressional approval. In this way, the inclusion of Attachment F, particularly as a firm or final schedule, is inappropriate and unlawful. It should be made extremely clear that the waiver only describes the current schedule and the schedule listed in the waiver may not be accurate in the future. Also, enrollment in the waiver should not be predicated on Attachment F or the current Recessions Act schedule.

5) Other Concerns re: Revised Language

- a. We are concerned about who and how determinations will be made for the following provisions that were added in the Revised Draft:
 - i. #38a,b,&c on p. 16 – re: reasons that a specific project may be determined to not be covered by the waiver
 - ii. #49 on p. 18 – last sentence indicates that if a Category A project is determined to have “a potentially significant impact on the environment,” it must be treated as a Category B activity.
 - iii. #11 on p.34 – states “a grazing allotment is ineligible for enrollment under this waiver if there is evidence of actual or *potential* (emphasis added) violation of applicable water quality requirements associated with grazing on the allotment.”

It is not appropriate for the State or Regional Board to have the unilateral ability to make such subjective determinations as are provided for in the above situations.

- b. It is not clear what the purpose is for adding provision #50 on pp. 18-19. We would appreciate understanding the rationale for its inclusion.
- c. It is not clear what the purpose is for adding the last sentence of provision #17 on p.27. Again, this is duplicative and unnecessary as the USFS already accounts for mitigating any environmental impacts of a project through the NEPA process.
- d. We are concerned about the addition of the last sentence under #10b on page 26. The nature of the USFS-permittee relationship makes this added provision particularly disconcerting. That is, State or Regional Board interference in the relationship could drastically upset the relationship balance that has been established over many years. Again, the USFS has an effective process for dealing with any potential water quality concerns. This procedure is a known quantity for permittees, and is therefore the process most likely to achieve water quality goals.

A Proposal Based on the Original Intent

In response to the September 20th State Water Resources Control Board’s (State Water Board)

workshop regarding a waiver for activities on National Forest lands, as well as the recently released Revised Draft, the CCA and Farm Bureau offer the following alternate proposal.

The State Water Board should issue a waiver covering activities on National Forest lands so long as they are implemented in accordance with the U.S. Forest Service's (USFS) Water Quality Management Handbook (WQMH).

When the waiver concept was first presented to stakeholders by the regulatory agencies, the proposal was for the State Water Board to evaluate and approve the USFS WQMH. Notwithstanding this original objective, the current draft of the USFS Waiver proposes to construct an entirely new and unworkable process that would obligate regulatory redundancy while adding significant uncertainty into the process. The proposed alternative will go back to the approach originally proposed – thereby simplifying the process, encouraging efficiency, avoiding what will become a significant burden to the SWRCB, the USFS, and stakeholders; all while leaving the State Water Board's abilities to protect water quality entirely intact.

Since this is a new approach, the environmental review process would need to be revisited. However, this new CEQA review would be clear and straightforward since it would look at the impacts of a waiver of activities conducted in accordance with the USFS' WQMP. Since the environmental benefits and impacts of the WQMP are well established, CEQA likely could be completed as a Mitigated Negative Declaration, though a full EIR may be more appropriate. The idea here is to make the WQMP an adequately comprehensive instrument for mitigating a potential impacts on National Forest lands. This would be accomplished through a comprehensive review process that incorporates all relevant science as well as public input.

A waiver based upon implementation of the WQMP is a better option than the proposed draft for a number of reasons. To begin with, it will improve regulatory efficiency by minimizing the regulatory redundancy between the State Water Board and USFS that exists in the current proposed waiver. This will relieve the Board of having to participate in NEPA review for every allotment, instead allowing it to focus on those NEPA processes where it may have concerns. This is necessary as the Regional Boards simply don't have the resources to be involved in each individual NEPA process. The NCWQCB USFS waiver experience has shown us that this allotment by allotment review is going to unnecessarily bog down the process. Similarly, the current draft waiver unnecessarily creates a duplicative avenue by which activities on National Forest lands can be challenged.

Our proposed waiver provides appropriate protections for water quality without hindering the State Water Board's enforcement authority or its involvement in the NEPA process. The State Water Board will still participate in the NEPA process, but will not be obligated to invest significant resources into duplicating what the Forest Service and other agencies are already doing on each individual allotment or activity. It is important to note that the State Water Board still has enforcement authority that it can use to address problem areas should any be found.

Please feel free to contact us with any questions. You may reach Justin Oldfield at 916-444-0845 or Elisa Noble at 916-561-5618.

Kind Regards,

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