

California Regional Water Quality Control Board
North Coast Region

ORDER NO. R1-2014-XXXX

Categorical Waiver of Waste Discharge Requirements
For
Discharges Related to Timber Harvest Activities
On Non-Federal Lands in the
North Coast Region

The California Regional Water Quality Control Board, North Coast Region, (hereinafter Regional Board) finds that:

1. California Water Code 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 Board a Report of Waste Discharge (ROWD) containing such information and data as may be required.
2. Pursuant to Water Code section 13260, regional boards prescribe waste discharge requirements except when it finds, pursuant to Water Code section 13269 that a waiver of waste discharge requirements (WDRs) for a specific type of discharge is in the public interest.
3. The State's Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy) requires that "all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools" (2007 Basin Plan, 4-33.00).
4. In the North Coast Region, discharges of waste resulting from timber harvest activities that pose a low or insignificant threat to water quality are regulated by conditional waivers of WDR. Individual or general WDRs are required for discharges of waste from all other timber activities.
5. In addition, the following waste discharge prohibitions from the Water Quality Control Plan for the North Coast Region (Basin Plan) pertain to timber harvest activities, including; logging, road construction, and associated activities in the North Coast Region:

Prohibition 1: The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.

Prohibition 2: The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.

6. On June 24, 2009, the Regional Board adopted Order No. R1-2009-0038, Categorical Waiver for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region, and superseded the previous Categorical Waiver (Order No. R1-2004-0016). This Order will supersede Order No. R1-2009-0038 consistent with the transition provisions in section III. This Categorical Waiver is similar to the existing 2009 waiver but makes both minor and substantial revisions and is structurally reorganized for clarity and usability. As described in more detail below, this Categorical Waiver adds conditions designed to meet Basin Plan temperature objectives.
7. This Categorical Waiver applies to five categories of timber harvest activities as defined in the Forest Practice Rules, and establishes general and specific conditions and eligibility criteria for each category for which WDRs can be waived. Implementation and compliance with the general and specific conditions result in timber harvesting projects that are considered to be low impact, and therefore pose no significant threat to water quality.
8. Pursuant to the Water Quality Control Plan for the North Coast Region (Basin Plan), including State Water Resources Control Board (State Water Board) Resolution No. 88-63, the existing and potential beneficial uses of waters potentially affected by the proposed activity include:
 - a. Municipal and Domestic Supply (MUN)
 - b. Agricultural Supply (AGR)
 - c. Industrial Service Supply (IND)
 - d. Industrial Process Supply (PROC)
 - e. Groundwater Recharge (GWR)
 - f. Freshwater Replenishment (FRSH)
 - g. Navigation (NAV)
 - h. Hydropower Generation (POW)
 - i. Water Contact Recreation (REC-1)
 - j. Non-contact Water Recreation (REC-2)
 - k. Commercial and Sport Fishing (COMM)
 - l. Cold Freshwater Habitat (COLD)
 - m. Warm Freshwater Habitat (WARM)
 - n. Wildlife habitat (WILD)
 - o. Preservation of Areas of Special Biological Significance (BIOL)
 - p. Rare, Threatened, or Endangered Species (RARE)
 - q. Marine Habitat (MAR)
 - r. Migration of Aquatic Organisms (MIGR)
 - s. Spawning, Reproduction, and/or Early Development (SPWN)
 - t. Shellfish Harvesting (SHELL)
 - u. Estuarine Habitat (EST)
 - v. Aquaculture (AQUA)
 - w. Native American Culture (CUL)
 - x. Flood Peak Attenuation/Flood Water Storage (FLD)
 - y. Wetland Habitat (WET)
 - z. Water Quality Enhancement (WQE)
 - aa. Subsistence Fishing (FISH)

The Basin Plan contains water quality objectives developed to protect the above-listed beneficial uses of water. Economic considerations were evaluated as required by law during the development of these objectives. Prohibitions, provisions, and specifications contained in this Categorical Waiver implement these previously

developed water quality objectives. Compliance with Water Quality Standards will protect these beneficial uses.

9. Populations of several species of anadromous salmonids listed as threatened or endangered under both the Federal Endangered Species Act or the California Endangered Species Act have declined significantly during the past half century in the majority of waterbodies in the North Coast Region. Degradation of freshwater habitat by land use activities is a major contributing factor to the decline in populations, with discharges of waste from timber harvesting and associated activities among the most significant factors.
10. The majority of water bodies in the North Coast region are impaired by excess sediment and water temperature caused by land management, with historic timber harvesting being one of the primary contributing factors. Rules regulating timber operations as well as accepted management practices have changed drastically in the past half century, most notably with creation and implementation of the California Forest Practice Rules (FPRs) [Cal. Code Regs., tit. 14, §§ 895-1115.3] in the mid-1970s. However, due to fundamental nature of harvesting and transporting trees in steep and remote setting, the potential remains for timber operations to result in discharge of sediment to watercourses and increases in water temperature from reductions in forest canopy that provides shade to streams.
11. California Department of Forestry and Fire Protection (CAL FIRE) is the state agency responsible for overseeing timber harvesting activities through implementation of the FPRs. Landowners proposing to harvest timber are required to have an approved Timber Harvest Plan (THP), prepared by a Registered Professional Forester (RPF), prior to starting timber harvesting activities. Pursuant to the FPR, the Regional Water Board, Department of Fish and Game (DFG), California Geological Survey (CGS), and other agencies are also responsible agencies that review THPs and provide recommendations to CAL FIRE as part of a "Review Team." CAL FIRE's THP approval process is the functional equivalent to the California Environmental Quality Act (CEQA) review process.
12. FPRs regulating timber operations contain rules for protection of the beneficial uses of water, as well as enhanced protection in watersheds with listed anadromous salmonids. One of the stated goals of the FPRs is to implement the Forest Practice Act in a manner consistent with the Porter Cologne Water Quality Act. (FPR §896.) CAL FIRE must disapprove a plan if it is likely to violate the Basin Plan. (FPR §898.2.) The FPRs provide measures designed to prevent sediment discharge. (FPR §914.2/ 934.2 [limiting tractor operations on steep or unstable slopes]; §923/943 [prescriptions for construction, reconstruction, use, maintenance, and decommissioning of roads and landings; §916.4/ 936.4 [requiring evaluation of sites that could adversely impact beneficial uses of water and treatment of such sites when feasible].) The FPRs also provide measures to limit reductions in riparian shade to protect water temperature. Regional Water Board staff continue to work with the Board of Forestry and Fire Protection, the government body charged with developing and revising the FPRs as

well as CAL FIRE, timberland owners, and other stakeholders, to identify ways to improve rules for protection of the beneficial uses of water.

In 2000, the FPRs were revised to include sections (FPR §916.9 and 923.9, *Protection and Restoration in Watersheds with Threatened and Impaired Values*) and 923.9/943.9 (*Roads and Landings in Watersheds with Threatened and Impaired Values*). These rules, collectively referred to as the "T&I" rules, were based in part on recommendations from a 1999 report by a scientific review panel on FPRs and salmonid habitat as well as on a proposal by staff from the Lahontan, Central Valley, North Coast Regional Water Boards and the State Water Board. The T&I rules were designed to enhance sediment control, riparian shade canopy retention and recruitment of large wood for protection of listed anadromous salmonids and apply to THPs approved after July 1, 2000. The T&I rules were revised in 2010 and renamed the Anadromous Salmonid Protection (ASP) Rules. The ASP rules expanded the geographic extent of where the rules apply to planning watersheds with listed anadromous salmonids as well as planning watersheds immediately upstream and contiguous.

13. The ASP rules modified protection measures for Class I watercourses and created a new category for Class II watercourses, the Class II-L (large), for watercourses that drain an area of 100 acres or more and with an average active channel width at least five feet within 200 feet of the confluence with a Class I watercourse. Shade canopy retention for Class II-L watercourses is similar to Class I; a 30 foot wide no harvest "core zone" and a 70 foot wide "inner zone", in which 80% (70% in the Northern Forest District) overstory canopy and the 13 largest conifers per acre must be retained. This protection applies to the total length of the Class II-L or the first 1,000 of the Class II-L, measured from its confluence with a Class I watercourse, whichever is less. Class II watercourses that do not meet the definition of a Class II-L are designated as Class II-S (small or standard). Canopy retention on Class II-S watercourses is essentially unchanged from the T&I or standard FPRs (50% total canopy), with the exception of a 15 foot "core zone", in which no harvesting is allowed.
14. The ASP rules are generally protective of shade and water temperatures in the areas where they apply. (See Resolution R1-2012-0013 [Policy Statement for the Implementation of the Water Quality Objective for Temperature], finding 29.) FPRs relevant to water quality protection include the following rule sections:
15. On January 1, 2015
16. The FPRs require RPFs to evaluate THP logging areas for conditions that could adversely impact the beneficial uses of water. The RPF must also provide a description of the management measures that will be implemented to protect and restore the beneficial uses of water to the extent feasible. (FPR §916.4/936.4) In order to ensure that measures designed to protect the beneficial uses of water are properly implemented as required by the FPRs, in 2004 the Regional Water Board

began requiring landowners to develop and submit Erosion Control Plans (ECPs) for THPs to comply with general WDR and waivers of WDRs. ECPs require landowners to prepare and submit to the Regional Water Board the following:

- an inventory of Controllable Sediment Discharge Sources (CSDS)¹;
- a prioritization and implementation schedule for treatment of each site based on potential impacts to the beneficial uses of water; and
- a plan to inspect the logging area after operations and provide a record of the results to the Regional Water Board upon request.

Information included in a THP to fully and properly comply with FPRs addressing erosion control and prevention or minimization of sediment discharge that is equivalent to the ECP requirements described in Categorical Waiver F when the landowner demonstrates to the satisfaction of Regional Water Board staff that the information is adequate to prevent and minimize controllable sediment discharge from the THP.

17. It is generally thought that partial harvesting under uneven aged silviculture has a lower potential to result in adverse impacts to water quality than more intensive harvesting under evenaged management. Tree retention can minimize potential changes in runoff patterns and peak flow that can impact beneficial uses of water. Also, the potential for increased sediment discharge from landslides is reduced by retaining root strength on vulnerable hill slopes. As such, harvesting methods that result in intensive canopy removal are limited under this Categorical Waiver. Intensive canopy removal, such as clearcutting, is allowed under this Categorical Waiver when buffers are provided for streams that are significantly larger than the minimum required under the Forest Practice Rules.
- * 18. Timber harvesting activities on landslides, or on those portions of the landscape that are vulnerable to landsliding, can increase rates of sediment delivery from landslides. This increase in the rate of landslide related sediment delivery can be prevented or minimized by avoiding or minimizing ground disturbance and canopy removal on vulnerable areas, or implementing recommendations made as a result of site characterization by a licensed geologist experienced in slope stability investigations. As such, no timber harvesting activities may be conducted under THPs covered by this Categorical Waiver on landslides and geomorphic features related to landsliding without site characterization and input into Project design by a licensed geologist.
19. Most water bodies in the North Coast Region are listed as impaired due to either excess sediment and/or elevated water temperature (Section 303(d) of the Clean Water Act). Federal regulations require that a total maximum daily load (TMDL) be established for 303(d) listed water bodies for each pollutant of concern. TMDLs

¹ Controllable sediment discharge sources are defined as sites or locations within the logging area that meet all the following conditions:

1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this WDR;
2. was caused or affected by human activity; and
3. may feasibly and reasonably respond to prevention and minimization management measures.

quantify the natural and anthropogenic sources causing impairment, assess the loading capacity of the watershed, and allocate the amount of a pollutant that can be discharged in a specific watershed without impairing beneficial uses of water.

In 2004, the Regional Water Board adopted a Sediment TMDL Implementation Policy (Resolution R1-2004-0087), which states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer impaired by sediment.

In 2012, the Regional Water Board also adopted a Temperature Policy statement, which encourages a combination of TMDL requirements with region-wide nonpoint source programs for efficiency and to avoid duplicative regulation. Often, the same management measures can address nonpoint source water quality concerns regardless of whether or not the waterbody is impaired. Sediment conditions interact with water in many ways that can affect water temperatures. Therefore, practices implemented to prevent and minimize elevated sediment discharges may also help control elevated water temperatures.

Water quality requirements from timber operations on non-federal lands can largely be implemented through full and proper implementation of the FPRs, with additional protection measures necessary to protect the beneficial uses of water incorporated into THPs for site-specific conditions when recommended by the Regional Water Board.

Waiver Categories

20. This Order sets out general and specific conditions for dischargers to obtain categorical waivers of WDRs for certain timber harvest activities conducted on non-federal lands in the North Coast Region. The Order includes: application procedures, eligibility and submission requirements (Section II), waiver for Projects previously enrolled for a waiver of WDR under Order No. R1-2009-0038 (Section III), termination of coverage (Section IV), and Prohibitions (Section V). Definitions used in this Order are detailed in attachment A.

There are five (5) separate categorical waivers for Projects as described in Findings 21 through 28 below. Each waiver category has a set of eligibility criteria, general conditions, and specific conditions when appropriate. The first step in seeking coverage under this Order is to determine if a given Project meets the eligibility criteria for one of five categories. For Projects that meet the eligibility criteria for a given categorical waiver, the Discharger must comply with all the specific conditions detailed in that category, as well as the general conditions necessary to obtain and maintain coverage under all waiver categories, starting with submittal of application documents described in Section III.

Findings 21 through 23 describe projects that are eligible for Categorical Waiver A:

21. California Code of Regulations, title 14, section 1104.1 exempts three categories of timberland conversion from THPs requirements, that when in compliance with all other permitting requirements of the Regional Board and other permitting agencies, are not likely to pose a significant threat to water quality. It is appropriate to waive waste discharge requirements for the following conversion exemptions:
- Conversion of less than three acres in size in one contiguous ownership,
 - Construction or maintenance of right-of-way by a public agency on its own or other public property,
 - The clearing of trees from timberland by a private or public utility for construction of gas, water, sewer, oil, electric, and communications rights-of-way, and for maintenance and repair of the utility and right-of-way.

However, higher potential impacts to water quality can result from conversion for vineyards, construction, and development projects that typically require waste discharge requirements and/or federal dredge and fill permits. These types of conversions are not covered by this Categorical Waiver.

22. California Code of Regulations, title 14, section 1052 allows timberland owners to submit a Notice of Emergency Timber Operations for a Fuel Hazard Reduction emergency when specified conditions are substantiated by the consulting forester. Operations conducted pursuant to an emergency must comply with all applicable Forest Practice Rules. In-lieu practices in riparian zones, exceptions to rules, and alternative practices are not allowed unless necessary to protect public health and safety. Due to the potential harm to public and private resources that could occur if fuel hazard reduction projects are not implemented in a timely manner when necessary, it is in the public interest to waive waste discharge requirements for Emergency Timber Operations.
23. California Code of Regulations, title 14, section 1038 exempts the following timber operations from the plan preparation and submission requirements:
- Harvesting Christmas trees
 - Harvesting dead, dying or diseased trees in amounts less than 10 percent (%) of the average volume per acre
 - Cutting and removal of trees within 150 feet from an improved or legally permitted structure for the purposes of reducing flammable materials and maintaining a fuel break
 - Harvesting dead trees which are unmerchantable from substantially damaged timberlands.

Such exemptions include restrictions on use of heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are roughly equivalent to the eligibility criteria for THPs as set forth in Categorical Waiver, and are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive waste discharge requirements for these exemptions.

24. Categorical Waiver B: Where there are no surface waters in or adjacent to the logging area so that there is no potential for discharge to waters of the state, WDRs can be waived. Because of the steep nature of the majority of the terrain and high average precipitation in the North Coast Region, it is uncommon that any part of a watershed, even ridgetop locations, is not located near a watercourse or in a position where sediment cannot discharge to a watercourse from ground disturbance in the project area. This situation is most likely to occur in the northeast portion the North Coast Region in areas underlain by geologically young volcanic rocks of the Cascade Range geomorphic province where surface water is sparse in the area due to the high permeability of the volcanic bedrock.
25. Categorical Waiver C: Owners and operators of (THPs) in watersheds with approved Total Maximum Daily Load (TMDL) action plans must comply with the requirements of those plans. TMDL action plans are designed to restore the impaired beneficial uses of a polluted body of water. The TMDL process provides a quantitative assessment of water quality problems, contributing sources of pollution, and the pollutant load reductions or control actions needed to restore and protect the beneficial uses of an individual waterbody impaired from loading of a particular pollutant. THPs for which the Executive Officer of the Regional Board has determined to be in compliance with a TMDL Action Plan are not expected to pose a significant threat to water quality. Therefore, it is appropriate to waive waste discharge requirements for THPs in the Garcia watershed that meet the conditions of Categorical Waiver C.
26. Categorical Waiver D: Modified THPs, as defined by the Forest Practice Rules, are limited to timberland ownerships of 100 acres or less. The Forest Practice Rules for modified THPs includes restrictions on intensive silvicultural prescriptions, heavy equipment on steep slopes, construction of roads and skid trails, timber operations on unstable areas and riparian areas, and winter period operations. These restrictions are roughly equivalent to the eligibility criteria for THPs as set forth in Categorical Waiver D, and are expected to reduce the likelihood that such plans will pose a significant threat to water quality. Therefore, it is appropriate to waive waste discharge requirements for modified THPs meeting Categorical Waiver conditions.
27. Categorical Waiver E: Categorical waiver E applied to Non-Industrial Timber Management Plans (NTMPs). On May 2, 2013, the Regional Water Board approved Order No. R1-2013-0005, General Waste Discharge Requirements for Discharges for Timber Operations on Non-Industrial Timber Management Plans (NTMPs) in the North Coast Region (General NTMP WDR), which superseded Categorical Waiver E. Beginning May 2, 2013, NTMPs were no longer eligible for coverage under the Categorical Waiver E (Orders R1-2004-0016 or R1-2009-0038).
28. Categorical Waiver F: The General and Specific Conditions of this Categorical Waiver limit the scope of impacts from timber harvesting plans (THPs) approved by CAL FIRE and other CEQA compliant timber harvesting activities so that discharges of waste will be minimized. Further, subsequent CEQA review ensures site-specific mitigation and appropriate project planning to protect water quality. As such, Projects that meet

the eligibility criteria for Category F are not expected to pose a significant threat to water quality, and therefore, it is appropriate to conditionally waive waste discharge requirements.

29. Effective January 1, 2004, Water Code section 13269 requires that waivers include the performance of individual, group, or watershed-based monitoring. This monitoring requirement may be waived for discharges that the Regional Board determines do not pose a significant threat to water quality. The categorical waivers set out herein are only for Projects that do not pose a significant threat to water quality. Discharges that pose a significant threat to water quality are not permitted by this Order. Any project covered hereby that warrants it and meets the criteria of Water Code section 13267(b), however, will be subject to a monitoring program as directed by the Executive Officer.

Miscellaneous

30. Pursuant to Water Code section 13269, the waivers of waste discharge requirements for the categories of waste specified herein shall not exceed five years in duration; that 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 Regional Board from administering enforcement remedies (including civil penalties) pursuant to the Water Code and other applicable law.
31. The Executive Officer or Regional Board shall terminate the applicability of this Order to any timber harvest activities at any time when such termination is in the public interest and/or the timber harvest activities could affect the quality or beneficial uses of the waters of the state.
32. This Order establishing a group of categorical waivers shall not create a vested right, and all discharges covered by it shall be considered a privilege, not a right, as provided under Water Code section 13263.
33. This Categorical Waiver is consistent with the provisions of State Water Resources Control Board (State Water Board) Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California." Both the state and federal antidegradation policies apply to surface waters in the North Coast Region. The antidegradation policies acknowledge that an activity that results in a minor water quality lowering, even if incrementally small, can result in a violation of antidegradation policies through cumulative effects, especially, for example, when the waste is a cumulative, persistent, or bioaccumulative pollutant.
34. On March 7, 2009, the Regional Board provided notice of intent to adopt a mitigated negative declaration (SCH No.2009042053) for the project. (Cal. Code Regs., title 14, § 15072.) The mitigated negative declaration reflects the Regional Board's independent judgment and analysis. The documents or other material, which constitute the record, are located at 5550 Skylane Blvd, Suite A, Santa Rosa, CA 95403.

The Regional Board will file a Notice of Determination within five days from the issuance of this Order.

35. The Regional Board conducted a public hearing on June 4, 2009 in Santa Rosa, California, and considered all evidence concerning this matter and adopted the Negative Declaration, a copy of which is attached hereto, and this Order, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region.
36. Based on the Initial Study and Negative Declaration, the adoption of the waivers of waste discharge requirements for timber harvest activities in accordance with Order No. R1-2009-0038 will be consistent with the Basin Plan, and will be in the public interest.

THEREFORE, IT IS HEREBY ORDERED that pursuant to Water Code sections 13269, the Regional Water Board hereby approves and adopts Order No. R1-2014-00XX to establish a categorical waiver of waste discharge requirements for discharges of waste from timber harvest activities on non-federal lands in the North Coast region.

Order No. R1-2009-0038 is hereby superseded. Projects that were previously waived under Order No. R1-2004-0038 are covered under this Order provided they meet the General Conditions described in Section I and qualify for one of the categorical waivers described in Sections II(A)-(F). No application is required for Projects that were previously waived under Order No. R1-2009-0038. All dischargers subject to categorical waiver of waste discharger requirements under this Order shall comply with the following:

SECTION I: General Conditions that apply to all Categorical Waivers:

1. The landowner shall comply with all applicable requirements and prohibitions specified in the Basin Plan as modified, and policies adopted by the State Water Board.
2. The Discharger shall allow Regional Board staff entry onto the affected property for the purposes of observing, inspecting, photographing, video taping, measuring, and/or collecting samples or other monitoring information to document compliance or non-compliance with this Order. If entry is unreasonably withheld, the Executive Officer may terminate the applicability of the Order pursuant to section IV.
3. The landowner shall conduct timber harvest activities and erosion control maintenance in compliance with the FPRs. In addition, FPRs and THP conditions (including, but not limited to, FPR sections 896, 898, 914 (934), 916 (936), 923 (943) and mitigation measures identified and required pursuant to CAL FIRE CEQA process) that are intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.

4. The landowner shall comply with all mitigation measures identified in any accompanying CEQA document. CEQA mitigation measures that are intended to protect water quality shall constitute enforceable conditions under this Order.
5. The landowner shall notify the Regional Water Board in writing at least 30 days prior to any proposed ground-based application of pesticides within 100 feet of a Class I or Class II stream. The notification shall include the type of pesticide(s), method and area of application, projected date of application, and measures that will be employed to assure compliance with applicable water quality requirements.
6. Recommendations and mitigation measures proposed by Regional Board staff during the CAL FIRE Project review and approval process are incorporated into the approved Project
7. The Discharger must resolve any Non-Concurrence that has been filed with CAL FIRE by Regional Board staff to the satisfaction of the Regional Water Board staff prior to enrollment in the Categorical Waiver. ✖
8. All amendments of THPs approved by CAL FIRE shall conform to the Eligibility Criteria and Conditions set forth for the originally waived Project. Failure to do so is a violation of the Categorical Waiver and subjects Discharger to enforcement action and/or termination of waiver coverage for the Project.

SECTION II: Categorical Waivers:

A: Emergency, Exemptions, and 3-acre conversions

The following are waived from submittal of ROWD, THPs, or enrollment application. The threat to water quality by this category of waiver is de minimis. Notification provided by CAL FIRE during its review process is sufficient notification. No additional application or reporting requirements beyond those already established by other regulations is required.

1. Timber Operations Pursuant to an Emergency Notice

Eligibility Criteria:

- a) Projects that conform to the rules for Emergency Notice pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1052) administered by CAL FIRE.
- b) CAL FIRE has accepted the Discharger's Emergency Notice for the Project and either: a) the Regional Board has received a copy of the notice of acceptance from CAL FIRE, or b) 5 working days, or 15 days for a fuel hazard emergency, have passed since submission of the Emergency Notice to CAL FIRE and the Emergency Notice was not returned to the submitter.

2. Exemptions as defined in Forest Practice Rules

Eligibility Criteria:

- a) Projects that conform to the rules for Exemptions pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1038) administered by CAL FIRE.
- b) CAL FIRE has accepted the Notice of Exemption for the Project.

3. Conversion Exemptions (also known as 3-acre conversions)

Eligibility Criteria:

- a) Projects that conform to the rules for Conversion exemptions pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1104.1) administered by CAL FIRE.
- b) The Discharger has submitted a Notice of Conversion Exemption for the Project to CAL FIRE that has been accepted, and the Regional Board has received a copy of the notice of acceptance from CAL FIRE.

Specific Conditions:

- c) Enrollment under this waiver does not cover discharges to waters of the United States that may require additional permits from federal and state agencies. If road construction includes new or upgraded watercourse crossings for a development following conversion that impacts waters of the United States, the Discharger must apply for and receive a federal Clean Water Act section 404 dredge and fill permit from the US Army Corps of Engineers and accompanying Section 401 water quality certification from the Regional Board.
- d) If the less than 3-acre conversion is or will be for the purpose of construction development (for residence or commercial purpose of any type), the Discharger must have submitted a Notice of Intent to comply with the Statewide construction stormwater permit and received an enrollment notice prior to commencement of construction activities. This includes grading and land clearing for any type of construction of 1-acre or greater.

B: Timber Harvest Plans with no watercourses

Eligibility Criteria:

1. Timber Harvest Plan (THP) under the FPRs approved by CAL FIRE, or other timber projects in compliance with CEQA. No watercourses are located within, or adjacent to the logging area and therefore, there is no potential for discharges of waste to waters of the state.

C: Projects in compliance with Approved Sediment or Temperature TMDL Action

Plan

In the case of Total Maximum Daily Load Projects, the following eligibility criteria and condition apply:

Eligibility Criteria:

1. The Executive Officer has determined that the Project is in compliance with the sediment TMDL Action Plan.

Specific Conditions: None

D: Modified Timber Harvest Plan Projects

Eligibility Criteria:

1. The project meets the definition as a Modified Timber Harvest Plan pursuant to Forest Practice Rules (Cal. Code Regs., tit. 14, §1051) and has been approved by CAL FIRE.

Specific Conditions:

1. If road construction includes new or upgrading of watercourse crossings, the Discharger has submitted a Notice of Intent for the statewide dredge and fill permit and has received a Notice of Exemption for the statewide permit for the project.

E: Nonindustrial Timber Management Plan (NTMP)

Categorical Waiver E has been superseded by Order No. R1-2013-0005

F: Other Projects (Timber Harvest Plans (THPs) and Other Timber Harvesting Projects)

Other Projects include standard THPs, or other timber harvesting activities in compliance with CEQA, the following eligibility criteria and conditions apply:

Eligibility Criteria:

1. Any other Project, such as a Timber Harvest Plan (THP) under the FPRs approved by CAL FIRE, or other timber projects in compliance with CEQA.

Specific Conditions:

1. The landowner shall prepare and submit an inventory of controllable sediment discharge sources (CSDS) within the logging area. The inventory must include a description of each CSDS and corrective actions that can reasonably be expected to

prevent or minimize sediment discharge for each site. The description of corrective action shall provide sufficient design and construction specifications, including diagrams, minimum rock size, or performance standards as needed, to allow on site personnel to implement corrective measures as intended.

Information included in a THP to fully and properly comply with FPRs addressing erosion control and prevention or minimization of sediment discharge from the logging area may meet this condition.

2. The landowner, RPF, or supervised designee shall conduct an inspection of the THP area including appurtenant roads and drainage facilities at least once annually during the life of the THP and throughout the erosion control maintenance period, preferably after the first complete winter period following completion. The purpose of the inspection shall be to ensure that erosion control measures designed to protect the beneficial uses of water have been implemented and are functioning properly, identify sites where such measures are not functioning as intended, and implement corrective action as needed to protect the beneficial uses of water. The RPF shall record the information listed below for each inspection, and shall provide the information to the Regional Water Board upon request;
 - i. Name of person conducting the inspection;
 - ii. Date of the inspection;
 - iii. A brief description of conditions observed

3. Timber operations on active landslides and geomorphic features related to landsliding shall be designed to prevent and minimize sediment discharge related to landsliding. The discharger shall prepare and submit a geologic report prior conducting any of the following timber operations on active landslides or geomorphic features related to landsliding,²:
 - a. Timber falling;
 - b. Ground based operations;
 - c. Road construction or reconstruction.

The report, to be prepared by a licensed California Professional Geologist, shall, at a minimum, be prepared in conformance with California Geologic Survey (formerly the California Department of Conservation Division of Mines and Geology) Note 45. The geologic report shall address the degree to which proposed Project activities on landslides or geomorphic features related to landsliding increases the risk of sediment delivery to watercourses, identifies current condition of down slope waters, estimates the amount of sediment that could be delivered from the slides or unstable areas from Project activities, and identifies and incorporates into the Project recommendations for preventing and minimizing the discharge of sediment from these sites.

² Landslides and geomorphic features related to landsliding are defined by California Geologic Survey formerly (California Department of Conservation Division of Mines and Geology) Note 50. This condition does not apply to dormant deep seated landslides shown on published geologic maps.

4. No timber harvest activities shall occur within the channel zone of a Class III watercourse, except for use and maintenance of roads, construction and reconstruction of approved watercourse crossings, and to allow for full suspension cable yarding when necessary to transport logs through the channel zone.
5. Post harvest stocking within the Project area shall comply with the unevenaged stocking requirements of the FPR or in the case of evenaged harvesting methods shall maintain a canopy closure of at least 65 percent (%) comprised of commercial species at least 30 feet in height.

Post harvest stocking may comply with evenaged harvesting stocking requirement with a canopy closure of less than 65% comprised of commercial species at least 30 feet on slopes less than 65 percent (%) and at least 200 feet slope distance from a watercourse as defined in FPR §895.1

6. Timber harvesting activities with Watercourse and Lake Protection Zones at a minimum comply with the 2014 ASP rules. Site specific recommendations by Regional Water Board staff intended to protect or restore shade to meet the temperature objective must be included in the approved THP. ✖
7. Roads shall be hydrologically disconnected from watercourses to the extent feasible. Hydrologically disconnecting roads consists of minimizing alteration of natural drainage patterns and preventing concentrated storm runoff from discharging into watercourses. Road segments that cannot feasibly be hydrologically disconnected from watercourses shall be treated to prevent and minimize surface erosion. Treatment may include seeding and mulching, rocking, slash packing, or other effective methods proposed by the Discharger.
8. The landowner that conduct a site visit to verify that measures necessary to prevent or minimize sediment discharge from all logging roads, landings, and skid trails used for timber operations shall be fully implemented upon completion of use for the year or by October 15, whichever is earlier. An exception is that drainage facilities and drainage structures do not need to be constructed on logging roads and landings in use through November 15th of a given year provided that all such drainage facilities and drainage structures are installed prior to the start of rain that generates overland flow.
9. No log hauling, ground based yarding, road construction or road reconstruction shall occur during the winter period (November 15 to April 1). This does not include work necessary to apply or maintain erosion control management practices or and sediment control to reduce sediment discharge.

Limited log hauling, ground based yarding, road construction, road reconstruction, or road rocking after November 15th of a given year may occur on during extended early winter dry periods with written concurrence by Regional Water Board staff.

10. No timber harvest activities shall occur during saturated soil conditions. This does not apply to maintenance of existing roads and watercourse crossings, use of non-

mechanized timber falling, fuels treatment such as hand piling and burning, hand fire line construction, or other activities which do not involve the use of heavy equipment or timber hauling,

11. The following activities are not permitted under Category F:

- a. Construction of new skid trails on slopes over 40 percent (%) within 200 feet of a watercourse,
- b. Construction of more than 2,000 feet of new roads,
- c. Heavy equipment use within a WLPZ, equipment limitation zone, or streamside buffer zone of a watercourse, except for the following situations:
 - use of existing roads;
 - reconstruction of watercourse crossings to prevent or minimize sediment discharge or provide fish passage;
 - use of existing bridges and culverts as skid trail crossings and maintenance of associated drainage facilities or structures;
 - upgrading of roads to permanent standards by rocking, paving or other suitable surfacing materials to establish a stable operating surface prior to the start of hauling operations,
- d. Ground based heavy equipment operations on slopes exceeding 50 percent (%).

SECTION III: APPLICATION PROCEDURES AND SUBMISSION REQUIREMENTS FOR CATEGORICAL WAIVERS

The first step in seeking coverage is to determine if a given Project meets one of the five Waiver categories. If the Project meets the eligibility criteria for a given categorical waiver, the Discharger must comply with all the general and specific waiver conditions, starting with submittal of the application documents, as required.

If a Project does not meet the eligibility criteria for one of the categorical waivers, the discharger must seek enrollment under an individual waiver, general WDRs, individual WDRs, or watershed wide WDRs.

- A. **To seek coverage for Projects under a categorical waivers C - F set out in Section I, the Discharger must submit to the Regional Board a "Certification Notice" that:**
 1. Is signed by the land owner or designee proposing the project,
 2. Identifies the type of categorical waiver requested (Categorical Waiver B: Timber Harvest Plans with no watercourses; Categorical Waiver C: Total

Maximum Daily Load Plan Projects; Categorical Waiver D: Modified Timber Harvest Plan Projects, or Categorical Waiver F: Other Projects, THPs),

3. Acknowledges, that the Discharger understands and intends to comply with all water quality requirements and the eligibility criteria and all general and specific conditions identified within the appropriate waiver category.
- B. The submission of a Certification Notice is not required for projects qualifying for coverage under the categorical waiver set out in Section I Categorical Waiver A: Emergency and Exemption Projects. Such Projects must, however, meet the eligibility criteria and conditions, both general and specific, to obtain and maintain coverage under Section I Categorical Waiver A.
- C. For project proponents applying for coverage under Categorical Waiver C-F, the Discharger may not commence timber harvesting activity until the Discharger has received written notification from the Regional Water Board staff stating that the certification notice has been received and that coverage under this Categorical Waiver is appropriate. Regional Water Board staff will notify the landowner in writing within ten (10) if coverage under the categorical waiver is determined to be inappropriate.
- D. For an approved Program Timberland Environmental Impact Report (PTEIR), the proponent of each future Program Timber Harvesting Plan (PTHP) may seek coverage under this Order for each new PTHP. If the PTHP did not qualify for coverage under this Order, the Discharger may seek coverage under the Order No. R1-2004-0030, General Waste Discharge Requirements for Timber Harvest Activities on Non-Federal Land. Alternatively, Dischargers may seek coverage under an individual waiver or individual waste discharge requirements.
- E. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under Water Code sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.

SECTION IV: TERMINATION OF COVERAGE

- A. To terminate coverage under a categorical waiver upon completion of the Project, a Discharger must submit a final certification to the Regional Board. The certification shall:
 1. Be signed by the landowner,
 2. Document the Project was conducted in conformance with the approved or accepted Project and with all applicable provisions of this Order,

3. Document that discharges resulting from the Project were in compliance or are expected to comply with all requirements of applicable water quality requirements, and
 4. Include a final annual inspection summary report to the Regional Board along with the final certification.
- B. Notwithstanding any other provision of this Order, the burden of proof is on the Discharger to demonstrate that each finding required for coverage under this Categorical Waiver can be made, and that each and every term, eligibility criterion, and condition has been met. Notwithstanding any other provision of this Order, no waiver coverage is valid unless each and every term, eligibility criterion, and condition is met.
- C. The Executive Officer shall terminate the applicability of a categorical waiver to a specific project if the Executive Officer makes any of the following determinations:
1. The Project does not comply with the eligibility criteria for the waiver;
 2. The Project is not in compliance with the applicable conditions of the waiver;
 3. The Project is reasonably likely to result or has resulted in a violation or exceedence of any water quality requirements;
 4. The Project has varied in whole or in any part from the approved Project in any way that could adversely affect water quality;
 5. Where conditions unique to the watershed or watershed segment (including, but not limited to, cumulative impacts, special hydrographic characteristics, Total Maximum Daily Load standards, the extent of timber harvest activities, intensity of ground disturbing activities, large acreage ownership holdings or management plans, rainfall, slopes, soil, effected domestic water supplies, an increased risk of flooding, or proximity to local, State, or National Parks) warrant further regulation;
 6. Where past land use activities unique to the watershed or watershed segment resulted in the discharge of human generated sediment in amounts which warrant further regulation;
 7. When requested by another state agency, a subdivision of the state (county) or a federal agency, and with concurrence by the Executive Officer.
- D. Upon receipt of a Notice of Termination of a categorical waiver, the Discharger shall immediately cease all timber harvest activities that may result in discharges of waste to waters of the state, other than activities necessary to control erosion. Upon notice of termination, the Discharger must apply for coverage under general WDRs or file a Report of Waste Discharge and applicable filing fee. Timber harvest activities that may result in discharges that could affect the quality of waters of the state may commence only upon enrollment by the Executive Officer under general or watershed wide WDRs, the adoption by the Regional Board of an individual waiver of WDRs or individual WDRs, or in accordance with Water Code section 13264(a).
- E. The applicability of this Order to a specific project is immediately terminated upon the discharger's receipt of a Notice of Termination of applicability or on the effective date of a different or new categorical waiver of WDRs, an individual waiver of WDRs, individual

WDRs, general or watershed WDRs or a NPDES permit that covers or permits the specific Project.

- F. Where waste discharge requirements have been issued by the Regional or State Water Resources Control Board and have not expired, a waiver of that discharge shall not be obtained without a decision by the Regional Board following a public hearing. Thus the Categorical Waiver cannot be used to modify any existing order of the Regional Board during the life of the permit.
- G. The provisions of this Order are severable; and, if any provision of this Order or the application of any provision of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
- H. Order No. R1-2009-0038 shall expire five years from the adoption date.
- I. Dischargers who fail to obtain coverage under this Order or another applicable order will be subject to enforcement under California Water Code sections 13350, 13264 and other applicable law if their Project results in an un-permitted discharge of waste.
- J. As provided by Water Code section 13350(a), any person may be liable for civil penalties if that person is in violation of a waiver condition, 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.

SECTION V: PROHIBITIONS

1. The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.
2. The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.
3. The Discharger must not cause or threaten to cause pollution, contamination, or nuisance, as defined by Water Code section 13050.
4. This Categorical Waiver does not waive WDRs for other regulatory programs, such as grading and land clearing for any type of construction of 1-acre or more. Such construction requires that the discharger obtain a construction stormwater permit and possibly a federal dredge and fill permit with accompanying 401 water quality certification if discharge occurs in waters of the United States.

5. **The Discharger shall not adversely impact human health or the environment, or the beneficial uses of water set out in the Basin Plan.**
6. **The Discharger and Project shall comply with applicable local, state or federal laws and regulations.**

Certification:

I, Catherine Kuhlman, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, North Coast Region, on June 4, 2009.

**Catherine Kuhlman
Executive Officer**

09-0038_Waiver_NonFedTimber_060409_JB

Attachment A

DEFINITIONS

- A. **"Controllable sediment discharge source"** means sites or locations within the Project area that meet all the following conditions:
 - 1. is discharging or has the potential to discharge sediment to waters of the state in violation of water quality requirements or other provisions of this Categorical Waiver,
 - 2. was caused or affected by human activity, and
 - 3. may feasibly and reasonably respond to prevention and minimization management measures.

- B. **"Discharger"** means the timberland owner and anyone working on behalf of the timberland owner in the conduct of timber harvest activities on non-federal lands.

- C. **"Minimization"** means the discharge or threatened discharge of sediment that cannot be prevented during design and implementation of the Project.

- E. **"Monitoring"** refers to all types of monitoring undertaken in connection with determining water quality conditions and factors that may affect water quality conditions. This includes, but is not limited to, assessment monitoring, trends monitoring, Basin Plan compliance monitoring, forensic monitoring, hillslope and instream effectiveness monitoring, and implementation monitoring.

- F. **"Prevention"** means the Project has been designed with the intent of preventing the discharge or threatened discharge of sediment waste through the use of all feasible and reasonable project design, timing, and sediment control practices.

- G. **"Project"** means any Timber Harvest Plan, Nonindustrial Timber Management Plan, other discretionary permits issued by the California Department of Forestry and Fire Protection (CAL FIRE) to harvest timber, including all amendments thereto that propose a change in timber harvest activities that in any way could adversely affect water quality, or any Notice of Exemption or Notice of Emergency Timber Operation accepted by CAL FIRE, or any other project, as defined by CEQA, that involves timber harvest activities provided that the project has compliance with CEQA.

- H. **"Qualified professional"** means a person with the appropriate training and/or licensing to prepare an Erosion Control Plan or other technical reports designed to prevent the discharge of waste into waters of the state and conduct site inspections, including but not limited to, Certified Erosion Control Specialists, Registered Professional Foresters, Professional Geologists, Certified Engineering Geologists, and Professional Engineers.

- I. **"Timber Harvesting Activities"** means commercial and non-commercial activities relating to forest management and timberland conversions. These activities include the cutting or removal or both of timber and other solid wood forest products,

excluding Christmas trees, as well as, but not limited to, construction, reconstruction and maintenance of roads, fuel breaks, firebreaks, watercourse crossings, landings, skid trails, or beds for the falling of trees; fire hazard abatement and fuel reduction activities; burned area rehabilitation; site preparation that involves disturbance of soil or burning of vegetation following timber harvesting activities; but excluding preparatory treemarking, surveying or roadflagging.

- J. **“Waste” includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal. Wastes specifically regulated under this Order include: earthen materials including soil, silt, sand, clay, rock; organic materials such as slash, sawdust, or bark that enter or threaten to enter into waters of the state; heat; petroleum products; and nutrients. Not all wastes are covered by this waiver. Examples of wastes not specifically regulated or waived under this Order include: pesticides, hazardous materials, or human wastes.**
- K. **“Water Quality Requirements” means a water quality objective (narrative or numeric), prohibition, TMDL implementation plan, policy, or other requirement contained in a Water Quality Control Plan (Basin Plan) adopted by the Regional Board and approved by the State Water Board, and all other applicable plans or policies adopted by the Regional Board or State Water Board, including, but not limited to, State Water Board Resolution No. 68-16, Statement of Policy with Respect to Maintaining High Quality Waters in California.**

All other terms shall have the same definitions as prescribed by the California Forest Practice Act and Rules in effect as of June 4, 2009, and the Porter-Cologne Water Quality Control Act.