

**Regional Water Quality Control Board  
Central Valley Region  
Board Meeting –18 March 2010**

**Response to Written Comments for Order R5-2010-\_\_\_\_;  
Renewal of Categorical Waiver of Waste Discharge Requirements for  
Discharges Related to Timber Harvest Activities**

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At a public hearing scheduled for 17/18 March 2010, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) will consider adopting Order No. R5-2010-\_\_\_\_ to renew the Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities (Waiver). The proposed Order includes a proposal for one-time enrollment fees for Categories 3 and 4 as well as minimal non-substantive (clerical) changes.

This document contains responses to written comments received from interested parties regarding the proposed Order circulated on 14 January 2010. Written comments from interested parties were required by public notice to be submitted to the Central Valley Water Board by 10:00 a.m. on 16 February 2010 to receive full consideration. Written comments were received by the deadline from:

1. California Forestry Association (CFA)
2. California Licensed Foresters Association (CLFA)
3. Collins Pine Co. (CP Co.)
4. Mason, Bruce & Girard, Inc. (MB&G)
5. Sierra Club and Battle Creek Alliance (SC)
6. Sierra Pacific Industries (SPI)
7. Sierra People's Forest Service (SPFS)
8. USDA Forest Service (USFS)
9. Vivian Parker representing: Center for Sierra Nevada Conservation, Yahi Group of the Sierra Club and Battle Creek Alliance (VP)

The written comments are summarized below, followed by Central Valley Water Board staff responses.

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**California Forestry Association (CFA)**

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**CFA – COMMENT 1:** CFA supports the renewal of the Waiver.

**RESPONSE:** Comment noted.

**CFA – COMMENT 2:** CFA strongly opposes the proposed fees.

**RESPONSE:** Comment noted.

**CFA – COMMENT 3:** CFA believes that timber harvest activities do not pose a significant threat to water quality based on the use of multiple Best Management Practices (BMP's) as incorporated in the Board of Forestry's Forest Practice Rules (FPR).

**RESPONSE:** Central Valley Water Board staff agrees that BMPs play a critical role in protecting water quality. While the FPR provide some prescriptive BMPs that decrease the likelihood of significant impacts to receiving waters, many of the BMPs are conceptual or performance-based in nature. Staff believes that it is not enough just to have BMPs codified in the FPR, since the "BMP Approach" requires that BMPs are properly designed and implemented in order to be effective in preventing significant impacts to water quality.

**CFA – COMMENT 4:** CFA states that the Forest Practice Act and timber harvesting plans (THPs) provide the functional equivalent of a full multi-disciplinary environmental review of an EIR pursuant to CEQA, wherein regional board PY for THP review are already funded via allocations from the State Water Board.

**RESPONSE:** The Central Valley Water Board staff involved in the review of timber harvest proposals is supported by the State's General Fund. The positions for each Regional Water Board are allocated by the State Water Board. The current State budget position has strained the General Fund and subsequently forced several cuts in the program within the last year. Also, see response to CLFA Comment #2.

**CFA – COMMENT 5:** CFA contends that the monitoring and reporting required by the Waiver is a substantial hidden cost to landowners and essentially constitutes a fee that is not recognized in the Waiver process.

**RESPONSE:** Central Valley Water Board staff acknowledges that the monitoring required by the Waiver represents a cost to landowners. However, based upon the monitoring results received in 2006 through 2009, it is clear that even the least costly visual monitoring that most landowners are subject to is producing positive results for water quality by allowing for proactive mitigation application and redesign of chronic mitigation deficiencies.

**CFA – COMMENT 6:** CFA notes that the cost of regulation in California has forced landowners out of forest management entirely or into more intensive ventures such as subdivision development. CFA maintains that the proposed fee

is a disincentive to further long term investment in maintaining California's forests.

**RESPONSE:** Staff believes that the State Water Board will establish a fee schedule in the next year or two, and that all dischargers will have to pay annual fees and not merely enrollment fees.

**CFA – COMMENT 6:** CFA supports the Waiver renewal without fees attached.

**RESPONSE:** Comment noted; see Response to CFA Comment 6 above, regarding fees.

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### **California Licensed Foresters Association (CLFA)**

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**CLFA – COMMENT 1:** CLFA states that there are thousands of acres of timberland regulated under the current Waiver. As such, they believe the addition of fees to Categories 3 and 4 will create great economic concerns for landowners.

**RESPONSE:** Central Valley Water Board staff acknowledges the extent of timberlands regulated under the Waiver in the region and the potential impact of fees on landowners. It is for this reason that the fees are being proposed as one-time enrollment fees rather than annual fees for only those Categories (3 and 4) that represent the greatest investment of staff resources.

**CLFA – COMMENT 2:** CLFA contends that there has been no information presented by Central Valley Water Board staff that shows that the factors defined under California Water Code Section 13269(a)(4)(D) were considered when proposing fees to be assessed as part of the Waiver.

**RESPONSE:** The enrollment fee is based on section 13260, not section 13269. Section 13260(f) requires the State Water Board to adjust fee schedules every year to be consistent with the Budget Act. This assures that all fees collected equal the cost of administering the program, and that the fees are not taxes. The State Water Board will consider the section 13269(a) (4) (D) factors when it develops a fee schedule for timber harvest waivers.

**CLFA – COMMENT 3:** CLFA notes that landowners already bear a large financial burden in terms of the cost of compliance with state water quality regulations. In addition to the mitigations that are consistently put into practice to protect the beneficial uses of water, costs are incurred annually (once operations begin) to comply with the monitoring and reporting requirements of the Waiver.

Not all operations are alike; a small landowner simply cannot afford to manage his or her property responsibly in the current regulatory climate.

**RESPONSE:** See Response to CLFA Comment 4.

**CLFA – COMMENT 4:** CLFA contends that a landowner may already be faced with such high costs in order to harvest timber on a small parcel, that an additional fee may tip the balance and prevent that landowner from harvesting at all. The decision to not harvest would likely prevent the landowner from completing needed road work and watercourse crossing upgrades that would have improved water quality. CLFA contends that this would result in less protection to the beneficial uses of water.

**RESPONSE:** All landowners and operators have a responsibility to absorb the cost of ensuring their activities do not adversely impact the quality or beneficial uses of waters of the State.

**CLFA – COMMENT 5:** CLFA contends that the proposed fees do not provide any new services to the regulated public. And notes that with the proposed fees being diverted to the State Board's Waste Discharge Permit Fund the regulated public doesn't know that the fees are "necessary to establish and implement the waiver program." CLFA believes that current market conditions dictate that the regulated public should be provided with an accounting of where the proposed fees would end up and how those fees would be spent.

**RESPONSE:** See Response to CLFA Comment 2.

**CLFA – COMMENT 6:** CLFA contends that the proposed fees for Category 3 and 4 means that private landowners will bear the burden of funding a program that is also used by the USFS (Category 5).

**RESPONSE:** Central Valley Water Board staff is currently engaged in an intensive joint effort between the State Water Board and the USFS to develop a new Water Quality Management Plan (WQMP) for USFS lands in California. This effort is intended to produce a new WQMP for State Water Board approval in January 2011. In conjunction with the new WQMP, the State Water Board intends to develop a statewide waiver for USFS lands. It is unclear how the development of the WQMP and proposed statewide waiver will affect the Central Valley Water Board's Waiver, but that it will affect the Waiver is safely assumed. Staff has determined that limiting proposed changes to the Waiver to only those portions related to private lands represents the most efficient use of staff resources at this time.

In addition, the proposed fees are associated with the projects that require the most staff resources for review, processing Waiver enrollment and conducting field inspections. In that light, the USFS proposes very few harvest projects in this region each year and the staff resources needed for the review process are not as significant as that required for our participation in the CAL FIRE THP review process.

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**Collins Pines Co. (CP Co.)**

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**CP Co. – COMMENT 1:** CP Co. is in favor of renewing the Conditional Waiver of Waste Discharge Requirements in its current form.

**RESPONSE:** Comment noted.

**CP C. – COMMENT 2:** CP Co. opposes fees.

**RESPONSE:** Comment noted.

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**Mason, Bruce & Girard, Inc. (MB&G)**

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**MB&G – COMMENT 1:** MB&G supports the Waiver and believes that the public's best interests are being well served by the current process.

**RESPONSE:** Comment noted.

**MB&G – COMMENT 2:** MB&G opposes the fee and states that the THP process has already become very costly. MB& G acknowledges that the State has budget issues there are other alternatives to bring the budget into balance.

**RESPONSE:** See Responses to CLFA Comments 2 and 4.

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**Sierra Club and Battle Creek Alliance (SC)**

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**SC – COMMENT 1:** SC is concerned that the Central Valley Water Board does not know how extensive clearcutting is; how short a period of time it has occurred in; or the extent of the impacts it is having on water quality and quantity. SPFS believes these issues must be addressed before renewing, extending or granting waiver to the waste discharge requirements.

**RESPONSE:** Central Valley Water Board staff is aware of the spatial and temporal distribution of clearcutting in the Central Valley Region. Regarding the question of water quantity, the published literature suggests

that increases in annual water yields will be higher for clearcutting than for less intensive forms of silviculture (Moore and Wondzell, 2005)<sup>1</sup>. There is less certainty regarding the effect of timber harvesting on water quality (Gomi et al., 2005)<sup>2</sup>. Water quality impacts from clearcutting can come from increased sediment supply due to hillslope disturbance (e.g. roads or ground-based skidding), or from increased transport capacity in the channel network due to decreases in evapotranspiration (i.e., channel scour from harvest related increases in flow). The relative dominance of the causal mechanism (i.e., changes in hydrology or sediment supply) should guide the regulatory approach to the activity. Staff believes that the proper implementation of effective BMPs should prevent the delivery of clearcut related sediment sources to waters of the State. Although little data is available, hydrology-related changes in water quality are suspected to be less important in the Central Valley region, as many streams are sediment supply-limited (i.e., bedrock and boulder controlled) and therefore less sensitive to changes in flows. To test the validity of this assumption, the Waiver has requirements to monitor watersheds subjected to high rates of harvest. Several watersheds in the region are approaching the threshold that requires this monitoring.

**SC – COMMENT 2:** SC notes that there are many thousands of miles of logging roads throughout the state’s watersheds. And that roads and watercourse crossings are the main source of sediment delivery to surface waters and degrade water quality.

**RESPONSE:** The Central Valley Water Board staff agrees that roads and watercourse crossings are the main source of sediment delivery from timberlands to surface waters. Managing staff resources to provide for a strong field presence to address site-specific issues is one of the foundations of the Waiver. Any other available regulatory method, such as developing individual WDRs would require staff to spend more time in the office drafting and reviewing documents instead of out in the field preventing the impacts before they occur.

**SC – COMMENT 3:** SC states that it is unclear why a waiver process was adopted for timber harvesting in the past and believes it is not appropriate to renew in light of the negative impacts timber harvesting has been researched and documented to produce.

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<sup>1</sup> Moore, R.D. and S.M. Wondzell. 2005. Physical hydrology and the effects of forest harvesting in the Pacific Northwest: A review. *Journal of the American Water Resources Association*. 41(4): 763-784.

<sup>2</sup> Gomi, T., R.D. Moore, and M.A. Hassan. 2005. Suspended sediment dynamics in small forest streams of the Pacific Northwest. *Journal of the American Water Resources Association*. 41(4): 877-898.

**RESPONSE:** For the reasons discussed in the Staff Report, staff disagrees that issuing the Waiver will have a negative impact on water quality, or provide less protection than waste discharge requirements would.

**SC – COMMENT 4:** SC believes waivers completely circumvent water quality rules and regulations such as the Clean Water Act.

**RESPONSE:** The Central Valley Water Board staff disagrees. The current Waiver has been upheld both by the State Water Board and in the Superior Court. It provides adequate criteria and conditions to require timber harvest activities to comply with requirements of all applicable water quality control plans. Silvicultural activities are largely exempt from the Clean Water Act. The Waiver explicitly states that it does not waive any applicable Clean Water Act requirements. (General Condition B.9.) Section 13269 does not give the board authority to waive any Clean Water Act provisions.

**SC – COMMENT 5:** SC states that in specific watersheds in Shasta County, a white foamy substance has been seen in the creeks after rain events. SC has sampled the foam and the results were positive for surfactants. Surfactants are added to the herbicides that are applied to land after it has been logged and replanted. These herbicides are known to be toxic to amphibians and have links to a wide range of human health problems.

**RESPONSE:** Surfactants may be either man-made or natural and are ubiquitous in our environment. The lab test most frequently used to identify presence or absence of surfactants (referred to as MBAS) does not differentiate between natural and man-made surfactants. A positive result from this commonly used test does not allow for the assumption that it is tied to an herbicide. The Central Valley Water Board staff is preparing to bring a Pesticide TMDL and Basin Plan Amendment before the Board in the summer of 2010. This TMDL and Basin Plan Amendment targets 38 pesticides that have been ranked as high or moderate risk to aquatic organisms, including several herbicides. However, the TMDL research has been limited to pesticides and herbicides frequently applied below reservoirs in the Central Valley Region. At this time the research is not sufficiently developed to allow the board to determine appropriate conditions to regulate herbicides. Staff further anticipates that the Pesticide TMDL will provide the regulatory guidance to ensure surface waters are not impacted by pesticides/herbicides used in timber harvest management. The Waiver currently requires compliance with the Basin Plan, and no alterations are required in the Waiver to address the pesticides listed in the Amendment. Once the TMDL is finalized, staff will

propose any changes to the Waiver that is necessary to comply with the TMDL's implementation plan.

**SC – COMMENT 6:** SC is concerned that the required monitoring allows the regulated industry to “self monitor”.

**RESPONSE:** Staffing resources within the Central Valley Water Board's Timber Program are simply insufficient to monitor all timber harvest activities across the region. Staff believes that self-monitoring provides learning benefits to the discharger (i.e., observing BMPs during and after storm events), a chance to address potential threats to water quality before they become impacts and greatly facilitates iterative management for the prevention of water quality impacts. Self-monitoring is consistent with all other Water Board programs and is augmented by staff's field presence.

**SC – COMMENT 7:** SC asks why the public agencies or the timber industry are not performing open and careful tests for herbicide impacts. SC also asks why the Central Valley Water Board is not studying the impacts of timber harvest and chemical use.

**RESPONSE:** See response to SC-Comment 5. Some of the larger private timber landowners have invested resources into performing water quality tests for a variety of potential impacts including sediment, temperature increases and herbicides.

**SC – COMMENT 7:** SC believes that granting a Waiver for industrial timber harvest activities means the board is continuing to condone practices that degrade and destroy water quality. SC asks that if the board renews the Waiver an explanation be provided for why the industrial timber harvest companies are above the rules, regulations and laws that pertain to others?

**RESPONSE:** See response to SC – Comment 4, and the discussion in the Staff Report. Central Valley Water Board staff disagrees with this comment, and believes that the Waiver provides an efficient and effective means to address discharges from timber harvest activities. It provides staff with a tool to obtain compliance with mitigation designed site-specifically to protect water quality. It also provides a process for regulating timber harvest activities with much fewer administrative requirements than individual WDRs, and allows staff to spend considerable time in the field to ensure measures designed to prevent impacts are installed correctly and to respond quickly to reports of violation in order to prevent further impacts to water quality. The Waiver requires conformance with the Basin Plan and any other regulations pertinent to timber harvesting activities. Staff believes that for the above

reasons, timber harvest companies are being held to the same rules, regulations and laws that pertain to other dischargers.

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**Sierra Pacific Industries (SPI)**

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**SPI – COMMENT 1:** SPI supports the renewal of the conditional waiver of discharge related to timber harvest activities.

**RESPONSE:** Comment noted.

**SPI – COMMENT 2:** SPI objects to the addition of fees, and is concerned for the future of managed timberlands in California if the regulatory cost in California continues to increase. SPI has approximately 275 enrolled Waiver projects. If the first annual fee is implemented at \$1,226.40 per project, it would cost us \$337,260.00 per year.

**RESPONSE:** The fee in question is a one-time fee paid with the waiver enrollment forms. To provide further clarification staff has removed the word “annual” in footnotes 1 and 2 in Attachment A and reworded paragraph 7 in the Order to the following:

*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 silvicultural operations. 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.*

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**Sierra People’s Forest Service (SPFS)**

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**SPFS – COMMENT 1:** SPFS is concerned with the unsustainable logging practiced by Sierra Pacific Industries. And believes that Central Valley Water Board staff may not know how extensive the clearcutting is, how short a time the clearcutting has occurred in or the extent of the impacts on water quality from the clearcutting. SPFS believes these issues are serious and must be addressed prior to renewing, extending or granting any waivers of waste discharge requirements.

**RESPONSE:** See response to SC – Comment 1.

**SPFS – COMMENT 2:** SPFS notes that there are many thousands of miles of logging roads throughout the state's watersheds. And that roads and watercourse crossings are the main source of sediment delivery to surface waters and degrade water quality.

**RESPONSE:** See response to SC – Comment 2.

**SPFS – COMMENT 3:** SPFS states that it is unclear why a waiver process was adopted for timber harvesting in the past and believes it is not appropriate to renew in light of the negative impacts timber harvesting has been researched and documented to produce.

**RESPONSE:** See response to SC – Comment 3.

**SPFS – COMMENT 4:** SPFS believes waivers completely circumvent water quality rules and regulations such as the Clean Water Act.

**RESPONSE:** See response to SC – Comment 4.

**SPFS – COMMENT 5:** SPFS believes that granting a Waiver for industrial timber harvest activities means the board is continuing to condone practices that degrade and destroy water quality. SPFS asks that if the board renews the Waiver an explanation be provided for why the industrial timber harvest companies are above the rules, regulations and laws that pertain to others?

**RESPONSE:** See response to SC – Comment 7.

**SPFS – COMMENT 6:** SPFS urges the Central Valley Water Board to not renew Resolution R5-2005-0052.

**RESPONSE:** Comment noted.

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### **USDA Forest Service (USFS)**

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These comments were received less than two hours late and are non-evidentiary, so staff has included the comments. No responses are required.

**USFS – COMMENT 1:** USFS supports the renewal of the Waiver as the renewal will not change the criteria or conditions for Category 5 (Activities on Federal Lands).

**RESPONSE:** Comment noted.

**USFS – COMMENT 2:** The Waiver has worked effectively over the past five years to protect water quality while allowing for management of timber and forest fuels on USFS lands.

**RESPONSE:** Comment noted.

**USFS – COMMENT 3:** The USFS is working with the State Water Board and Regional Boards to revise the USFS Water Quality Management Plan (WQMP). This revised plan will serve as the basis of a statewide regulatory action that will cover most activities on USFS lands in California. Therefore, major changes to Category 5 of the Waiver are not warranted at this time.

**RESPONSE:** Comment noted.

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**Vivian Parker representing: the Center for Sierra Nevada Conservation, the Yahi Group of the Sierra Club, Battle Creek Alliance and self (VP)**

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**VP – COMMENT 1:** VP is in general support of the requirements of the conditional waiver.

**RESPONSE:** Comment noted.

**VP – COMMENT 2:** VP expresses concern that dischargers will continue to be allowed to “self monitor” water quality.

**RESPONSE:** See response to SC – Comment 6.

**VP – COMMENT 3:** VP contends that the uncertainties related to the environmental and human health effects of pesticide/herbicide application generates the need for modification of the Waiver monitoring requirements to require sampling both pre- and post-harvest. VP also states that there is no consistent monitoring of pesticide/herbicide practices being conducted by any agency of the state. The pesticide/herbicide monitoring would determine whether discharges from timber harvest management activities are in compliance with Basin Plan standards. And VP believes that the cost of the monitoring should be the responsibility of the discharger.

**RESPONSE:** See response to SC-Comment 5. The Waiver provides the Central Valley Water Board Executive Officer with the following authority: *“The Executive Officer may issue site-specific and individually developed Water Quality Compliance and Assessment/Trend watershed scale monitoring and reporting programs in accordance with these Monitoring and Reporting Conditions (Attachment B). The Executive Officer may also revise and re-issue Monitoring and Reporting Programs at any time.”*

Therefore, the Central Valley Water Board's Executive Officer may require a discharger enrolled under the Waiver to monitor for pesticide/herbicide impacts if needed on a site-specific basis. The cost of the monitoring required by the Waiver has been and will remain the responsibility of the discharger.