



North Coast Regional Water Quality Control Board

December 10, 2019

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Board of Forestry and Fire Protection

Matt Dias, Executive Officer
Board of Forestry and Fire Protection
P.O. Box 944244-2460
Sacramento, CA 94244-2460

Dear Mr. Dias,

Subject: Comments on draft 2019 Emergency Notice of Timber Operations Monitoring and Report on Exemption Usage (draft Report)

The North Coast Regional Water Quality Control Board staff (NCRWQCB) is submitting this formal comment letter to you and the Joint Committee of the Board of Forestry in regard to the California Department of Forestry and Fire Protection (CAL FIRE) and State Board of Forestry and Fire Protection (BOF) draft Report.

This comment letter is split into three sections that address: (1) background context for the NCRWQCB's investigation into post-fire salvage activities, (2) specific comments and considerations related to aspects of the draft Report, and (3) general recommendations relative to Emergency Notice project oversight and regulations.

Acknowledgements:

NCRWQCB staff would like to thank CAL FIRE leadership and technical staff for their collaboration and partnership during our joint investigation of Emergency Notices (ENs) in the North Coast Region that formed the basis for the draft Report. CAL FIRE should be commended for their strong technical and scientific approach to evaluating these projects. We look forward to our continued partnership with CAL FIRE and BOF in continuing to oversee important fuels and forest health improvement projects while ensuring that water quality is being protected.

Special appreciation to Pete Cafferata, Drew Coe, Stacy Stanish, and Will Olsen for assisting in coordinating inspections. Thank you to Eric Huff and Dennis Hall for encouraging our agencies' staff to partner during the implementation of our monitoring efforts.

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

Review of Post-Fire Timber Salvage Operations in the North Coast Region

The 2017 North Bay fires greatly impacted the communities of Sonoma and Napa counties, including staff from the NCRWQCB, some who lost their homes or were evacuated for extended periods. During the year that followed, an increasing number of the small landowners affected by the Tubbs Fire decided to salvage some of the value of the merchantable timber on their property, leading to a flurry of post-fire timber salvage operations. Many of these salvage projects were occurring on lands that may not have otherwise been involved in commercial timber operations.

Due to the increase in activities as well as ongoing efforts to limit the impacts in the fire-impacted watersheds, NCRWQCB staff began conducting inspections of post-fire timber salvage projects that were occurring within the area of the Tubbs fire. Staff's initial assessment of some of these projects revealed on-the-ground activities that in some places did not appear to be providing water quality protection that is commonly required through the Forest Practice Rules standards of practice for routine timber harvest activities. At times, staff observed significant problems related to erosion control best management practices, ground-based heavy equipment operations within areas that would otherwise have been precluded from watercourse and lake protection zones, and discharges of sediment to watercourses.

Post-fire timber salvage projects implemented as Emergency Notices (ENs) under 14 CCR §1052, receive ministerial review and approval by CAL FIRE and are authorized by the NCRWQCB under Order No R1-2014-0011, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Categorical Waiver). As stated in the draft Report, Exemption and Emergency (EX-EM) Notices "are documents containing strict operational prohibitions and requirements for use in exchange for rapid ministerial review and approval. EX-EM notices are exempt from the requirement for a THP but must adhere to the operational provisions of the California Forest Practice Rules (FPRs) and be compliant with all other relevant laws and regulations for protection of natural resources." Historically, these EN projects have received very little, if any, review by our agency.

Under California Water Code, categorical waivers of waste discharge requirements must be renewed every five years. In 2018, the NCRWQCB was still automatically enrolling all CAL FIRE-approved EN projects under its Categorical Waiver, which was set to expire in 2019. As a result of the increasing number of ENs being filed in the North Coast Region, and our initial review of a small number of these projects, in April 2019, the NCRWQCB adopted Order No. R1-2019-0008, approving a short-term renewal of the Categorical Waiver to allow NCRWQCB staff sufficient time to develop and implement a Post-Fire Timber Salvage Inspection Workplan.

The goal established for the Workplan was to investigate at least 20 individual ENs across the North Coast Region to assist in determining whether EN projects enrolled

under our Categorical Waiver were being appropriately regulated to ensure water quality protection. NCRWQCB staff developed an Emergency Notice Inspection Form to assist in documenting EN project conditions on the ground (attached). The methodology for the Workplan largely mimics that of a pre-harvest inspection for a timber harvest plan, wherein staff investigate various aspects of the EN project such as: watercourse, road and landing conditions; estimated length of road and skid trails used; watercourse classification and protections; soil stabilization measures; operations on steep slopes, operations in WLPZs, operations on unstable areas; potential/existing sediment discharges to watercourses; and other post-fire activities.

Through our participation in the AB-1492 Leadership Team, in late 2018 CAL FIRE leadership informed NCRWQCB staff of the new SB-901 obligations to conduct monitoring of EX-EM projects and report to the legislature, as is described under California Code, Public Resources Code - PRC § 4589 as follows:

(a) The department and board, in consultation with the Department of Fish and Wildlife, and the State Water Resources Control Board, shall commencing December 31, 2019, and annually thereafter, review and submit a report to the Legislature on the trends in the use of, compliance with, and effectiveness of, the exemptions and emergency notice provisions described in Sections 4584 and 4592 of this code and Sections 1038 and 1052 of Title 14 of the California Code of Regulations. The report shall include an analysis of exemption use and whether the exemptions are having the intended effect. The report shall also include recommendations to improve the use of those exemptions and emergency notice provisions, information on the linear distance of road constructed or reconstructed under notices of exemption by individual ownerships, within a representative sample of planning watersheds from each forest practice district as defined in Sections 907 to 909, inclusive, of Title 14 of the California Code of Regulations, and violations associated with road reconstruction. The report shall include information on the number and type of violations and enforcement actions taken on each notice of exemption and emergency notice. The report shall also contain the number of post-treatment onsite inspections that occur and whether those inspections were attended by a representative of the Department of Fish and Wildlife and a representative of the State Water Resources Control Board. The report submitted on December 31, 2025, shall include recommendations necessary for revisions to diameter limits at stump heights of harvestable trees under subdivisions (j) and (k) of Section 4584.

Due to CAL FIRE and the BOFs' obligations to investigate EN projects, as well as the NCRWQCB's intention to implement its own Inspection Workplan, our agencies decided to partner together to coordinate on these parallel efforts.

2019 Emergency Notice Inspection Observations

In April 2019, CAL FIRE and the NCRWQCB conducted the first joint EN inspections in areas of the Tubbs Fire. Altogether, NCRWQCB have conducted 20 individual EN inspections, 19 of which were conducted as part of the CAL FIRE random probabilistic survey that provided information for the draft Report. Our staff intend to utilize the information we generated from our EN inspections to develop recommendations for our Board's consideration during a future adoption of the Categorical Waiver.

The CAL FIRE's draft Report findings are largely consistent with those observations made by the NCRWQCB staff during our jointly conducted inspections. More than half (~60%) of the EN projects the Review Team Agencies observed were conducted in a manner consistent with the standards we expect for a timber harvest plan. However, there were numerous EN projects inspected (~40%) that were not conducted in a manner that would appear to be consistent with typical forest practice rules operational standards, and other project related conditions that could qualify as violations of the water quality standards as specified in the Water Quality Control Plan for the North Coast Region (Basin Plan).

The Basin Plan contains specific standards and provisions for maintaining high-quality waters of the state that provide protection to the beneficial uses of water. The Basin Plan's Action Plan for Logging, Construction, and Associated Activities (Action Plan) includes two waste discharge prohibitions (Page 4-29.00 of the 2011 Basin Plan):

- i. 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.”
- ii. 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.”

Section 3 of the Basin Plan contains water quality objectives not to be exceeded as a result of waste discharges. The water quality objectives that are considered of particular importance in protecting the beneficial uses from unreasonable effects due to waste discharges from land development activities include the following:

- i. Suspended Material: “Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.”

- ii. **Settleable Material:** “Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.”
- iii. **Sediment:** “The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.”
- iv. **Turbidity:** “Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones of dilution within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waiver thereof.”

On-the-ground conditions for those EN projects that NCRWQCB staff observed were discharging, or threatening to discharge controllable sediment to waters of the state included, but were not necessarily limited to:

- Sediment discharges to watercourses from skid trails, roads, landings
- Incorrectly installed or absent road/skid trail drainage features (e.g., waterbreaks, dips, etc.)
- Unaddressed hydrologic connectivity from new skid trail construction to Class III watercourses
- Sediment discharges at watercourse crossings
- Unmapped watercourses
- Unmapped domestic water supply line
- Damage to domestic water supply line from heavy equipment
- Tractor skidding down a watercourse

Specific Comments on the CAL FIRE’s draft 2019 Emergency Notice of Timber Operations Monitoring and Report on Exemption Usage

1. Random Sample Selection: Page 2 of the draft Report discusses the random sampling scheme that CAL FIRE staff utilized to identify which EN notices would be monitored. As stated in the report “Bias can systematically favor some conclusions over others, and it is vital to minimize bias when results are used in decision-making.” However, the draft Report also describes certain criteria that were used to determine whether an EN was selected for sampling, or otherwise replaced, including whether a timberland owner did not wish to be involved in monitoring.

NCRWQCB Comment 1: Based on our experience regulating nonpoint source pollution in the North Coast Region, we have become aware that landowners who have water quality problems are at times less interested in having our staff conduct inspections on their properties. It would be helpful to know how many landowners did not allow CAL FIRE to conduct inspections as part of the

monitoring effort. Does CAL FIRE believe that the landowner denials had only a negligible effect on the statistical confidence of the monitoring results?

2. Operational Provisions: Page 6 of the draft Report states: “EX-EM notices are exempt from the requirement for a THP but must adhere to the *operational provisions* of the California Forest Practice Rules (FPRs) and be compliant with all other relevant laws and regulations for protection of natural resources.”

14 CCR §1052 (b) states: “Timber Operations pursuant to an emergency notice shall comply with the Rules and regulations of the Board. A person conducting Timber Operations under an Emergency Notice shall comply with all *operational provisions* of the Forest Practice Act and District Forest Practice Rules applicable to ‘Timber Harvest Plan’, ‘THP’, and ‘plan’.”

NCRWQCB Comment 2: In the context of the 14 CCR §1052 (b), it is not clear to our agency how and to what extent the operational provisions of the FPRs apply to EN projects. Considering the conclusion of the draft Report that a significant portion of EN projects exhibited “substandard” or “unacceptable” performance related to water quality outcomes, it would be beneficial to better describe which *operational provisions* (if not all) CAL FIRE and BOF expects for EN projects. For example, do 14 CCR §923, 924, 963 Intent for Logging Roads, Landing, and Watercourse Crossings, referred to as “the Road Rules”, apply to ENs?

3. Unstable Areas: Page 19 of the report states that “CGS identified 12 separate Emergency Notices that had field verified unstable areas present, or 25% of the harvest Emergencies. Three emergencies also had subsequent timber operations occur on the unstable areas.”

NCRWQCB Comment 3: The draft Report should provide additional information regarding the types of operations that occurred on unstable areas and whether there were any notable observations from the CGS inspections.

4. Enforcement: The CAL FIRE has not issued any notices of violation, or conducted progressive enforcement, for activities and on-the-ground conditions observed on ENs visited as part of the draft Report. PRC 4589 states that the report to the legislature “shall include information on the number and type of violations and enforcement actions taken on each notice of exemption and emergency notice.” Page 24 of the draft Report concludes that only 60% of road watercourse crossings used for harvest activity were rated as “Acceptable”, while the remaining 40% were either “Substandard” or “Unacceptable”.

NCRWQCB Comment 4: Considering the variety of water quality observations made as part of the EN Monitoring effort, it is unclear in the draft Report why there were not any enforcement actions taken on “Substandard” or “Unacceptable” project outcomes. The CAL FIRE should discuss the rationale for

not including information about notices of violation or progressive enforcement in the draft Report.

5. Recommendation included in the draft Report: The draft Report includes four recommendations regarding: (1) the need for proper administration by RPFs and LTOs conducting EN projects; (2) greater oversight of EN projects by Review Team Agencies; (3) greater education of nonindustrial timberland owners on their legal responsibilities for EN projects, and (4) future collaboration amongst the Review Team Agencies for future monitoring.

NCRWQCB Comment 5: NCRWQCB concur with these recommendations and suggest that “nonindustrial” be removed from recommendation #3 on page 28. The obligation of all timberland owners, whether they be industrial or non-industrial, is to ensure conformance with the legal obligations of the CAL FIRE, regional water quality control boards, and CDFW.

General Comments Relative to Emergency Notice Project Oversight and Regulations

6. Road Construction: The passage of SB-901 created the new Fire Prevention Exemption under which a landowner has the ability to construct up to 2 miles of road over a given five-year period within a single subwatershed, so long as the longest road segment does not exceed 500 feet and cannot connect to any other new segment of road. Emergency Notifications conducted through the Forest Practice Rules 14 CCR §1052 do not have any limitations on the amount of road construction that can occur. In some circumstances, a single EN can include several miles of new road construction, miles of road reconstruction, and may include dozens of new or reconstructed watercourse crossings. At times, EN road construction occurs on very steep and unstable terrain underlain by extremely erodible geologies (e.g., decomposed granite).

NCRWQCB Comment 6: The CAL FIRE and BOF should re-evaluate whether the construction of new roads, reconstruction of existing roads, and installation/replacement of watercourse crossings is an appropriate activity for ministerial EN project review and approval. Perhaps thresholds should be established for certain activities included in an EN project (e.g., project size, road construction length, watercourse crossing construction, etc.) above which an EN project should be considered a discretionary action that warrants greater agency review and oversight.

7. Operational Provisions: The draft Report suggests that a significant portion (40%) of the surveyed EN projects produced water quality outcomes that were either “Substandard” or “Unacceptable”. This may be due to a lack of understanding on the part of the EN project applicant, landowner, and implementing licensed timber operator (LTO) regarding what is expected as part of their post-fire salvage activities. Greater clarification as to the expectations for EN project

implementation would likely result in improved project performance and justification for their continued ministerial review and approval.

NCRWQCB Comment 7: The BOF and CAL FIRE should consider developing a guidance document or technical addendum regarding the operational provisions that apply to EN projects.

Conclusions

The NCRWQCB and its staff recognize the impacts that wildfires can have on our communities, the environment, as well as public and private lands. Our staff support the efforts of the CAL FIRE and the BOF to conduct this rigorous scientific evaluation of EN projects and appreciate the collaborative efforts of our partner agencies. We largely concur with the observations of the draft Report and believe it provides important information regarding these ministerial projects, the need for additional oversight, and the value of effective regulatory expectations.

Along with the other Review Team Agencies, the NCRWQCB is also part of the Governor's Forest Management Task Force which is seeking to increase the pace and scale of fuels management projects on private lands in order to protect communities and improve forest ecosystem resilience. We support these objectives and recognize that discretionary regulatory oversight can, at times, place a burden on landowners seeking to implement important projects on the properties.

However, the draft Report provides important insight to the Review Team Agencies and the legislature regarding the potential environmental effects that can result from some discretionary projects. Through the development of effective regulations, we believe that there is a balance that can be struck between discretionary and ministerial projects, while also sustaining environmental protections.

Thank you for the opportunity to provide these comments.

Sincerely,

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NCRWQCB Vision Statement: *Healthy Watersheds, Effective Regulation, Strong Partnerships*



Emergency Notice Inspection Form

Inspection Information

EM: _____

Inspection Date _____	WQ Inspector(s) _____
Fire Name _____	Fire Date (MM/YYYY) _____
Other Agencies _____	Inspection Timing _____ Pre / Active / Post
EM Acreage _____	EM Acceptance Date _____
RPF Name _____	Timberland Owner(s) _____
LTO Name _____	Planning Watershed _____

Observation Checklist *(Complete checklist of observation and rank accordingly; 1 is lowest risk to water quality; 5 is highest. To provide additional details, number flags (F1,F2,F3, etc.) for specific observation and provide narrative descriptions after each flag number on following pages). Components of an EM that are properly implemented and fully supporting beneficial uses warrant a risk rating of 1. Risk ratings of 2 and 3 describe components that are not fully implemented or functioning properly. Components that are threatening or currently discharging sediment would receive a 4 or a 5, depending on severity. Assigning a rating of 4 or 5 requires identifying why in a flagged description on the next page.*

	<u>WQ Risk</u>	<u>Flag #</u>
<input type="checkbox"/> Watercourse crossing conditions <i>(Number of crossings inspected: _____)</i>	1 2 3 4 5	_____
<input type="checkbox"/> Landing conditions <i>(Number of landings inspected: _____)</i>	1 2 3 4 5	_____
<input type="checkbox"/> Road conditions <i>(Estimate of road used in EM: _____ft)</i>	1 2 3 4 5	_____
<input type="checkbox"/> Skid trail construction and drainage <i>(Number of skid trail crossings inspected: _____)</i>	1 2 3 4 5	_____
<input type="checkbox"/> Watercourse classifications and protections	1 2 3 4 5	_____
<input type="checkbox"/> Soil stabilization measures <i>(water bar condition and spacing, straw or slash placement, etc)</i>	1 2 3 4 5	_____
<input type="checkbox"/> Operations on steep slopes <i>(<65% or <50% that lead without flattening to a watercourse)</i>	1 2 3 4 5	_____
<input type="checkbox"/> Operations in WLPZs	1 2 3 4 5	_____
<input type="checkbox"/> Operations on unstable areas	1 2 3 4 5	_____
<input type="checkbox"/> Potential/existing sediment discharges to watercourses	1 2 3 4 5	_____
<input type="checkbox"/> Other post-fire activities <i>(Powerline work, cannabis cultivation, residential construction, etc)</i>	1 2 3 4 5	_____

Attachment: CAL FIRE EM No. _____



Emergency Notice Inspection Form

Flagged Comments *(Provide narrative description of your observations as needed to characterize observations. Key comments to flagged observations (F1, F2, F3, etc.) on previous page or "other" as warranted). Refer to photos (P1, P2, P3, etc) described in the Photo Log.*

F1



Emergency Notice Inspection Form

Photo Log *(Provide a brief description of the location and direction of each photograph).*

P1

P2

P3

P4

P5

P6

P7

P8

P9

P10

P11

P12

P13

P14

P15

P16

P17

P18

P19

P20

P21

P22

P23

P24

P25

P26

Attachment: CAL FIRE EM No. _____



Emergency Notice Inspection Form

Additional Information *(Provide any additional details, site observations, or sketches below).*

Attachment: CAL FIRE EM No. _____

Joint 1 (c)