CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

October 3, 2013

Mr. George D. Gentry
Executive Officer
Board of Forestry and Fire Protection
P. O. Box 944246
Sacramento, CA 94244-2460

Dear Mr. Gentry:

Subject: Comments on the Board of Forestry proposed revisions to the Class II-Large Identification Methods dated August 23, 2013, Title 14 of the California Code of Regulations

File: Timber, General

Enclosed are comments on the proposed revisions to the Class II-Large (Class II-L) Identification Methods dated August 23, 2013, Title 14 of the California Code of Regulations. The Anadromous Salmonid Protection Rules (ASP Rules), adopted by the Board of Forestry and Fire Protection (BOF) on October 7, 2009, introduced additional protection measures for watercourses designated as Class II-L. The Regional Water Board submitted extensive comments on the ASP Rules and Class II watercourse protection measures at that time.

We fully support adding clarity of intent and application to the existing rules, but we believe the proposed revisions will preclude Class II-L protection from some Class II watercourses where the additional canopy retention is warranted. In addition to the two proposed criteria for classifying Class II watercourses as Class II-l, we have identified a third criterion based on mid-summer flow conditions, that we believe is necessary to align Class II-L Identification Methods with state and regional water board requirements and policies, and the protection of beneficial uses of water.

We appreciate the opportunity for our staff to participate in the Board of Forestry's rule-making process. Our role in this process is similar to our role in CAL FIRE's timber harvest review process, where Regional Water Board staff provide recommendations as needed to ensure full compliance with water quality requirements, including the Basin Plan

Temperature Objective. Collaboration between the agencies has resulted in recognition of the need for and development of new Forest Practice Rules for increased protection of the beneficial uses of water when warranted. As the Forest Practice Rules are revised to achieve attainment of water quality standards and improved watershed conditions, we anticipate that Regional Water Board permits and staff resources will be able to rely to a greater extent on those rules. By including the flow criterion recommended in our attached staff comments, the Board of Forestry has an opportunity to further move the Forest Practice Rules towards this goal.

If you or your staff have any questions regarding our comments, please contact David Fowler at 707-576-2756.

Sincerely,

Fred J. Blatt
Division Chief
Nonpoint Source and Timber Harvest

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Enclosures: 1) Memo from David Fowler, Staff review of the proposed Class II-Large Identification Methods, October 3, 2013

California Water Boards

Edmund G. Brown Jr., Governor

Matthew Rodriquez, Secretary for Environmental Protection

North Coast Regional Water Quality Control Board

October 3, 2013

To: Fred Blatt
Division Chief
Nonpoint Source and Timber Harvest

FROM: David Fowler
Representing review staff

Subject: Comments on the on the FPC 2.0 Staff Draft Class II-L Rule Text, April 2013

File: Timber, General

North Coast Regional Water Quality Control Board (Regional Water Board) staff have reviewed the "*Class II-L Identification and Protection Amendments, 2013*" proposed rulemaking that was published by the Board of Forestry and Fire Protection (BOF or Board) for public comment on August 23, 2013. Regional Water Board staff fully support adding clarity to intent and application of the existing rules and we appreciate the efforts of the Board to provide such clarity to the Class II-L Identification Methods section (14 CCR 916.9(g)(1)) of the Forest Practice Rules (FPRs). We do, however, have concerns with the proposed revisions and whether they meet the intended goal of providing both clarity and protection for the resource.

While the simplification of the determination methods should provide both clarity and ease of application, we believe the proposed revisions weaken the existing water quality protections. One of the criticisms of the current determination methods is that they are strongly flow-centric with little attention to other Class II-L values. That is, the current Class II-L identification methods are primarily based on the presence of flowing water in mid-July in a year with average precipitation. In the proposed revisions, however, the pendulum appears to have swung the other way. Temperature is cited (page 2 of 7, line 8 of the proposed text) as one of the benefits that a Class II watercourse may provide to a receiving Class I watercourse, yet the ability to provide cold water during the mid and late summer has been removed from the determination criteria.

The proposed revisions include two criteria (14 CCR 916.9(g)(1)(A)(1) and (2)) for determining whether a Class II watercourse should receive Class II-L protections. Criterion 1 requires a Class II watercourse to have a contributing drainage area of at least 100 acres in the Coast Forest District, or at least 150 acres in the Northern and Southern Forest Districts. Criterion 2 requires an active channel width that averages at least five feet for 200 feet beyond the outside edge of the Class I watercourse and lake protection zone (WLPZ). The scientific basis for either of these criteria has not been demonstrated.

There is no consideration in the proposed revisions for Class II watercourses that may have a drainage area less than 100 acres or exhibit a narrow bankfull channel width, yet may still provide significant cold water to a receiving Class I watercourse. Without such consideration, the proposed revisions would not ensure compliance with the temperature objectives of the Water Quality Control Plan for the North Coast (Basin Plan).

The Initial Statement of Reasons states, "Notably, the amended description now includes a clear reference to the Class II-L attribute of 'larger channel size,' and deletes the practically useless reference to water flow during the month of July." Cold water input from Class II watercourses during the summer and fall periods provide an important benefit to receiving Class I watercourses.

The Notice of Proposed Rulemaking states, "It may be presumed that the level of protective effect upon the environment will not be reduced as a result of this proposed regulation." However, this statement was contradicted by an analysis presented during Forest Practice Committee discussions that indicated the proposed regulation would provide Class II-L protection to no more than just over half of the watercourses that qualify under the existing rules.

The water quality objective for temperature contained in the North Coast Basin Plan states that the natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses. The proposed revised rule language may make it difficult to meet this objective. An additional criterion to identify Class II watercourses that provide cold water input to receiving Class I watercourses should be included. Regional Water Board staff suggest the following: 916.9(g)(1)(A) "<u>3. Mid-summer flow conditions that contribute flow to a Class I watercourse.</u>"

Regional Water Board staff have commented previously on the limitations of Class II-L protections. This proposed rule change only heightens our concerns. In addition to the geographical limitations of the ASP Rules, Class II-L protections are limited to a maximum of 1,000 feet from a receiving Class I watercourse. Above the 1,000-foot limit, a Class II watercourse receives Class II Standard (Class II-s) protections regardless of the continuing presence of Class II-L characteristics. The stated purpose for this enhanced riparian protections within 1000 feet of a Class I stream is the maintenance of salmonid habitats in

Class I streams. However the water quality objectives contained in the Basin Plan are designed to protect all beneficial uses of waters of the state, not just specific species that are known to be present at some distance downstream. Class II streams are particularly important environments for temperature sensitive aquatic organisms such as aquatic insects, salamanders, and other amphibians (Progar and Moldenke 2002, Vannote and Sweeney 1980, Welsh and Hodgson 2008). The thermal conditions that support these organisms are necessary for maintenance of the Cold Freshwater Habitat (COLD) beneficial use. While the buffers provided for Class II-s streams has some value for controlling temperature increases associated with timber harvest activities, they don't ensure that the intrastate temperature objective will be achieved. Changes in the temperature of streams following harvests utilizing similar buffers have been demonstrated to occur in experiments conducted in other locales (e.g., Jackson et al. 2001, Rashin and Graber 1992,).

As stated earlier, the water quality objective for temperature contained in the North Coast Basin Plan states that the natural receiving water temperature of intrastate waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses. Regional Water Board staff are concerned that without the inclusion of a third criterion related to flow and temperature, the proposed Class II-L Identification Methods will result in fewer Class II watercourses receiving Class II-L protection and create a situation where CAL FIRE approves plans that could violate the Basin Plan temperature objective. This could result in plan amendments in order to comply with applicable waste discharge requirements. We recommend that rules be developed that are consistent with applicable water quality objectives and protection of the applicable beneficial uses of water, particularly with respect to temperature. This approach would help our agencies and provide the people of the state with efficient government.

References Cited:

Jackson, C. R., Sturm, C. A., & Ward, J. M. (2001). Timber Harvest Impacts On Small Headwater Stream Channels In The Coast Ranges Of Washington. *JAWRA Journal of the American Water Resources Association, 37*(6), 1533-1549.

Progar, R. A., & Moldenke, A. R. (2002). Insect production from temporary and perennially flowing headwater streams in western Oregon. *Journal of Freshwater Ecology, 17*(3), 391-407.

Rashin, E., & Graber, C. (1992). *Effectiveness of Washington's Forest Practice Riparian Management Zone Regulations for Protection of Stream Temperature.* Washington State Department of Ecology, Environmental Investigations and Laboratory Services Program, Watershed Assessments Section.

Vannote, R. L., & Sweeney, B. W. (1980). Geographic analysis of thermal equilibria: a conceptual model for evaluating the effect of natural and modified thermal regimes on aquatic insect communities. *American naturalist*, 667-695.

Welsh jr, H. H. and Hodgson, G. R. (2008), Amphibians as metrics of critical biological thresholds in forested headwater streams of the Pacific Northwest, U.S.A. Freshwater Biology, 53: 1470–1488. doi: 10.1111/j.1365-2427.2008.01963.x