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Affiliate of Redwood Coast Watersheds Alliance

June 4, 2014

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

Subject: Comment - Rule Making Consistent with the Language of AB 904 – Working Forest Management Plan

Dear Mr. Gentry:

Included below are our current comments regarding specific use related to this rule making process. As indicated by previous letter and a history of Coast Action Group involvement in the development of AB 904 and other Board of Forestry Rule Making and Regional Water Board Rule Making, we have indicated our concerns and positions related to development and adoption of such rules affecting water quality and forest values.

Briefly, our major concerns with the current rulemaking process falls in a limited area of categories – including:

- \* Consistency with the wording and intent of the AB 904 Legislation
- \* Noticing
- \* Erosion Control Inventory and Planning
- \* Maintenance and recruitment of Late Seral (old growth) values and inventory
- \* Water Quality Considerations (Compliance with Basin Plan)
- \* Review Period
- \* Clarification of some operational considerations (i.e. Limiting amalgamation of properties).

## **Consistency with the language and intent of the Legislation:**

Note: Language from the legislation included in this document will be indicated so – in italics.

*4597.20. The board shall adopt the regulations needed to implement this article by January 1, 2016.*

*The bill would require the board to adopt regulations needed to implement the above provisions by January 1, 2016. (P.2)*

The language and intent in the legislation is clear and uncomplicated. The language in the rule making/regulation shall be consistent with and adequately reflect the plain language of the legislation. Deviation from the legislative language and intent is not acceptable. Any, such deviation in language that is required to be consistent with other State Code or regulation shall be supported by justification and analysis.

This rulemaking is a project under CEQA. Consistency with the legislative language and any alteration of language shall be reviewed for applicability – where the language must address the legislative intent. Rule language must address any issue in a manner equal to or better than the stated language in the legislation.

Current iterations of the rule contain some apparent language changes, differences, that appear to fail to meet the legislative language and/or intent of the legislation. In these comments, we are pointing out the legislative language at issue and expect the Board to make appropriate adjustments – to be consistent with and reflect the legislative language. We are not offering language fix suggestions.

## **Noticing (and) Review Periods**

The bill contains language that indicates noticing and maintenance of web-based documentation of the Plan. Rulemaking language shall indicate that not only the plan should be available on the web – all available documents necessary for accurate review of the plan shall be maintained on the web as part of the Plan.

*4597.3. The board shall adopt regulations regarding the notice of receipt of the proposed working forest management plan. The notice shall be given within two working days following receipt of the proposed management plan and shall be consistent with all applicable laws. The method of notice shall include, but not be limited to, mailed notice and Internet-based notice. The regulations may require the person submitting the working forest management plan to provide to the department a list of the names and addresses of persons to whom the notice is to be mailed.*

*4597.4. The department shall provide notice of the filing of working forest management plans, the proposed plans, and working forest harvest notices on its Internet Web site, and to any person who requests, in writing, that notification.*

*4597.5. Upon receipt of the proposed working forest management plan, the department shall place the proposed plan, or a true copy of the proposed plan, in a location or on an Internet Web site available for public inspection in the county in which timber operations are proposed under the plan. For the purpose of interdisciplinary review, the department shall also transmit a copy to the Department of Conservation, the Department of Fish and Wildlife, the appropriate California regional water quality control board, the county planning agency, and all other agencies having jurisdiction by law over natural resources affected by the plan. The department shall invite, consider, and respond in writing to comments received from public agencies to which the plan has been transmitted and shall consult with those agencies at their request.*

4597.6. (a) *The department shall provide a time period for public comment, starting from the date of the receipt of a working forest management plan, as follows:*

*(1) Ninety days for a working forest management plan for less than 5,000 acres.*

*(2) One hundred ten days for a working forest management plan for between 5,000 and 9,999 acres.*

*(3) One hundred thirty days for a working forest management plan for between 10,000 and 14,999 acres*

As noted above, review periods may need to be altered due to Plan changes and late information provided by the timberland owner, or as required by the Review Team – to attain the stated objectives of the Act and Rules. Thus, additional time for responsible agency and public review may be required. This should be considered in the rulemaking .

## **Erosion Control**

*(j) “Working forest management plan” means a management plan for working forest timberlands, with objectives of maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values.*

The definition, above, indicates language (rule language) that will sufficiently protect water quality values as well as habitat and uneven aged development and recruitment (with late seral implications – see below).

Prior to plan approval:

*4597.2. (b) A description of the land on which the plan is proposed to be implemented, including a United States Geological Survey quadrangle map or equivalent indicating the location of all streams, the location of all proposed and existing logging truck roads*

This description and mapping should be included as part of Erosion Control Plan (or inventory of roads, erosion sites – ongoing or potential – and schedule for remediation) to be included in the Plan.

As per the following:

*(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion*

## **Maintenance and recruitment of Late Successional (old growth type) values and inventory**

Language shall be included to assure maintenance of inventory , protection, and recruitment of late successional forest type:

*(g) (1) A description of late succession forest stands in the plan area and how the total acreage of this type of habitat will be maintained across the plan area under a constraint of no net loss. Nothing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval. An exception to the no net loss con-*

*straint may be granted in the event of a catastrophic loss due to emergency factors such as wildfire, insect, and disease activity. The description shall include the following:*

*(A) Retention measures for existing biological legacies such as snags, trees with cavities or basal hollows, and down logs, and address how those legacies shall be managed over time appropriate with the forest type, climate, and landowner's forest fire fuels and wildlife management objectives.*

*(B) Hardwood tree species and how they will be managed over time.*

*(2) Late succession forest stand types or strata shall be mapped.*

*(3) Notwithstanding the definition of late succession forest stands in Section 895.1 of Title 14 of the California Code of Regulations, and for the sole purpose of this article, "late succession forest stands" means stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs.*

*(h) Disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the biological assessment area, their status and habitats, take avoidance methodologies, enforceable protection measures for species and habitats, and how forest management will maintain these over time*

This is to include protection of other wildlife values (as stated – above – and – below )

*(2) (A) For long-term sustained yield projections, pursuant to subdivision (c), that project a reduction in quadratic mean diameter of trees greater than 12 inches in diameter or a reduced level of inventory for a major stand type or for a stand or strata that make up greater than 10 percent and less than 25 percent of the working forest management plan area, an assessment shall be included that does all of the following:*

*(i) Addresses candidate, threatened, endangered, and sensitive species, and other fish and wildlife species that timber operations could adversely impact by potential changes to habitat.*

*(ii) Addresses species habitat needs utilizing the "WHR system" described in "A Guide to Wildlife Habitats in California," California Department of Fish and Wildlife, 1988, or comparable typing system.*

*(iii) Addresses constraints to timber management, the impact of the availability and distribution of habitats on the ownership and within the cumulative impacts assessment area identified in the plan in relation to the harvest schedule, and the impacts of the planned management activities utilizing the existing habitat as the baseline for comparison.*

*(iv) Discusses and includes feasible measures planned to avoid or mitigate potentially significant adverse impacts on fish or wildlife, which can include, but is not limited to, recruitment or retention of large down logs greater than 16 inches in diameter and 20 feet in length, retention of trees with structural features such as basal hollows, cavities, large limbs, or broken tops, retention of hardwoods, and retention or recruitment of snags greater than 24 inches in diameter and 16 feet in height.*

## **Other Water Quality Considerations (Compliance with Basin Plan)**

### **Review Period**

Clarification of the review period(s) and the opportunity for public participation is needed

*The bill would require the department to provide a public comment period of at least 90 days from the date of the receipt of the plan, as specified.*

These are very large scale and detailed plans – requiring significant and detailed review and reporting by the land owner and participating agencies. The current language needs to address the issue of additional time need

by agencies to obtain required information and for the public to have sufficient time to obtain an review that information.

Additionally, if the plan changes in process or is altered by Second Review recommendations, the public and participating agencies need additional time for review.

The language for the 5 year interdisciplinary review shall contain opportunity for public comment on such review. 4597.12 (c)

### **Clarification of Operational Considerations**

There is concern (where clarification is needed in the rules) that there will be attempts to amalgamate (combine) properties to qualify these properties, under this act as a Working Forest Management Plan.

Such amalgamation of combining of properties would provide numerous review and management problems – with varying and different – stand types, strata, management goals, erosion problems, ECPs, and other requirements. Allowing such combinations of different ownerships (under one plan) would make review and management of the Working Forest Management Plan impossible for responsible agencies review and monitor – and , thus, defeats the intent of the legislation.

Language in the bill indicates one owner/operator

*The bill would authorize a person who intends to become a working forest landowner, as defined, to file a working forest management plan with the department, with the long-term objective of an uneven aged timber stand and sustained yield through the implementation of the plan*

- (i) *“Working forest landowner” means an owner of timberland with less than 15,000 acres who has an approved working forest management plan and is not primarily engaged in the manufacture of forest products.*

### **Other Considerations**

#### **Carbon Sequestration -**

*(5) To ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services, the working forest management plans shall comply with rigorous timber inventory standards that are subject to periodic review and verification*

The above language suggests stringent inventory review that maintains forest values (species, water quality, old growth) – and – additionally assures accrual of carbon. Rule language should reflect this.

### **Amendments**

**Amendments shall comply with existing rules and applicable codes (including the regional Basin Plan) at the time of amendment:**

*4597.7. The working forest landowner may submit a proposed amendment to the approved plan and shall not take any action that substantially deviates, as defined by the board, from the approved plan until the*

*amendment has been filed with the director and the director has determined, after completion of the interagency review and public comment period, either of the following:*

*(a) The amendment is in compliance with the current rules and regulations of the board and the provisions of this chapter.*

*(b) The amendment is in compliance with the rules and regulations of the board and the provisions of this chapter that were in effect at the time the working forest management plan was approved. The director may only make this determination if the registered professional forester explains, justifies, and certifies both of the following:*

*(1) The adherence to new or modified rules and regulations of the board would cause unreasonable additional expense to the working forest landowner.*

*(2) Compliance with the rules and regulations of the board and the provisions of this chapter that were in effect at the time the working forest management plan was approved will not result in any significant degradation to the beneficial uses of water, soil stability, forest productivity, or wildlife*

## **Growth and Yield Targets**

The language in the legislation is very clear regarding criteria used to establish growth and yield targets.

The language in the rules must adequately reflect the legislative language and intent.

## **Compliance with State Code**

Rulemaking shall comply with the following:

*(b) This article shall be implemented in a manner that complies with the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Division 1 of Title 5 of the Government Code), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the Porter Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of the Fish and Game Code).*

Rulemaking shall reflect and be consistent with language and intent of the legislation (AB – 904)

This includes Cal Water Code (Porter-Cologne) and the regional Basin Plans. Erosion control planning that does not consider potential erosion sources is not consistent with the Basin Plan. Rulemaking that does not consider Regional Water Board Temperature Policy is not consistent with the Basin Plan.

All provisions of the section 4597.11 will be clearly stated in enforceable language.

Sincerely,

Alan Levine, for Coast Action Group