

BOARD OF FORESTRY AND FIRE PROTECTION

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**State Board of Forestry and Fire Protection****Notice of Public Comment Period
and
Findings Pursuant to Government Code Section 11346.1(b)****Emergency Regulation to Implement "Water Drafting Amendments, 2014"****Notice Date: June 3rd, 2014**

The California Board of Forestry and Fire Protection (hereafter "Board") has adopted an emergency regulation for water drafting operations that are associated with commercial timber operations. This action is being taken in accordance with Government Code Sections 11346.1 and 11349.6 of the California Administrative Procedures Act. This emergency regulation also conforms to the Administrations Proclamation of a State of Emergencies issued as Executive Orders on January 17th, 2014 and April 25th, 2014 in response to unprecedented drought conditions that the State is currently experiencing.

The Board adopted the emergency regulation following a noticed public hearing at their regularly scheduled meeting of May 14th, 2014. **This regulation will be submitted to the Office of Administrative Law on June 9th, 2014.**

If you wish to comment on the adopted emergency regulations, you must submit the comment directly to the Office of Administrative Law (hereafter "OAL") within five **calendar** days of OAL's posting of the proposed emergency regulations on the OAL web site. You may submit comments on the adopted emergency regulations to:

Mail:

OAL Reference Attorney
300 Capitol Mall, Suite 1250
Sacramento, California 95814

Fax:

(916) 323-6826

E-mail:

staff@oal.ca.gov.

OAL will accept all comments submitted by the specified deadline.

When you submit a comment to OAL, you must also submit a copy of your comment to the rulemaking agency's specified contact person.

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The Board's mission is to lead California in developing policies and programs that serve the public interest in environmentally, economically, and socially sustainable management of forest and rangelands, and a fire protection system that protects and serves the people of the state.

This regulation will be submitted to the Office of Administrative Law on June 9th, 2014.
The public comment period closes at 5:00 PM on June 16th, 2014.

OAL will confirm that the agency has received the comment. Pursuant to Title 1, California Code of Regulations, Section 55(b)(1) through (4), the comment must state that it is about an emergency regulation and include the topic of the emergency.

The Board is not required and, in this instance, not likely to respond to comments submitted. However, should the Board choose to respond, it must submit its response to OAL within eight (8) **calendar** days following the date of submission of the proposed emergency regulation to OAL, unless specific exceptions are applicable. [Title 1 CCR Section 55].

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I. BASIS AND FINDINGS FOR BOARD ADOPTION OF EMERGENCY REGULATIONS

The following observations, findings, and declarations serve as the basis for the Board of Forestry and Fire Protection's recent adoption of emergency regulations to implement "Water Drafting Amendments, 2014".

1. The Board was compelled to respond in an expeditious manner to a request from the Department of Forestry and Fire Protection (*CAL FIRE*) to adopt emergency regulations for the purposes of conserving of water resources that may be impacted as a result of water drafting activities associated with commercial timber operations. Water drafting is a common practice that often accompanies commercial timber harvest activities. Water is often necessary for the purposes of dust abatement on unsurfaced roads to address safety of road use, controlling of fugitive dust from entering watercourses and to maintain road surface stability. Additional water is often utilized to facilitate construction of landings, roads or watercourse crossings. It is often the case that long term water storage, through the use of reservoirs or tanks, is not an available source of water in remote portions of the state where commercial timber harvest activities are a common management practice. Therefore, water is often directly drafted from watercourses or developed springs into trucks that transport and apply water to targeted locations. Current Board regulations, 14 CCR § 916.9 (Protection and Restoration of the Beneficial Functions of the Riparian Zone in Watersheds with Listed Anadromous Salmonids) address water drafting operations within watersheds that have known listed anadromous species present, namely chinook salmon (*oncorhynchus tshawytscha*), coho salmon (*oncorhynchus kisutch*), or steelhead (*oncorhynchus mykiss*).

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but do not specifically address water drafting activities outside of these watersheds. Adoption of this emergency regulation would extend a regulatory standard to all watersheds within the state when water drafting activities are proposed in conjunction with commercial timber harvest activities.

2. The Board was compelled to respond in an expeditious manner to the Proclamations of Emergency put forth by the Administration in response to drought conditions throughout the state. This expedited action was taken to reduce the harmful impacts from drought as the state's weather patterns shift towards several months of rainless conditions during severe drought conditions.

3. Promulgation of these regulations is immediate and necessary to maintain public peace, health and safety, or the general welfare of the citizens of California through implementation of mandated compliance with Department of Fish and Wildlife Section 1600 for water drafting activities for the purposes of conservation of water resources within the forested landscapes of the state.

4. Promulgation of these regulations is immediate and necessary to protect aquatic habitats for all flora and fauna that depend on surface water within the forested environments of the state.

5. Promulgation of these regulations is immediate and necessary to assure that supplies of domestic sources of water for rural communities and dwellings are not adversely affected by over utilization of surface water from water drafting activities.

6. Promulgation of these regulations is immediate and necessary to assure that water resources are conserved within the forested landscapes of the state that would allow for wildfire suppression activities in the unfortunate ignition of wildfire within watersheds where water drafting associated with commercial timber activities is occurring.

7. Promulgation of these regulations is immediate and necessary to conserve water resources for the maintenance of recreational opportunities, where available, for the people of the state within watersheds where water drafting associated with commercial timber activities is occurring.

II. AUTHORITY AND REFERENCE

Authority: Authority cited: Sections 4551, 4562.7 and 21000(g), Public Resources Code. Reference: Sections 751, 4512, 4513, 4551.5, 21000(g), 21001(b) and 21002.1, Public Resources Code; Sections 100, 1243 and 13050(f), Water Code; and Sections 1600 and 5650(c), Fish and Game Code.

III. INFORMATIVE DIGEST/PLAIN ENGLISH POLICY STATEMENT OVERVIEW

Pursuant to the Z'berg-Nejedly Forest Practice Act of 1973, Public Resources Code Section 4511, *et seq.* the State Board of Forestry and Fire Protection (Board) is authorized to construct a system of forest practice regulations applicable to timber management on state and private timberlands, including but not limited to timber operations conducted under Timber Harvest Plans.

Pursuant to this statutory authority, the Board previously adopted regulations contained in 14 CCR § 916.9 (r). These regulations apply to watersheds with listed anadromous salmonids and require compliance with Section 1600 of Fish and Game Code for water drafting activities and also mandate that descriptions of both the drafting site and drafting activities be provided in a Timber Harvest Plan (Plan) that is submitted to *CAL FIRE* for review. Although existing regulation for watersheds that do not support anadromy do not specifically address water drafting activities, there are requirements that direct that Licensed Timber Operators shall not remove water from watercourses in amounts deleterious to fish, wildlife, beneficial function of riparian zones, or the quality and beneficial uses of water (reference 14 CCR 916(b)). Although in times of non-drought conditions these regulatory standards may be sufficient, it has been determined that existing non-prescriptive standards are not adequate for purposes of water conservation during time of emergency drought conditions.

This emergency rulemaking proposal would result in requiring that Registered Professional Foresters (RPFs) comply with Department of Fish and Wildlife (DFW) Section 1600 for proposed water drafting operations. In addition, a prescriptive standard for the description of various attributes of both the drafting location(s) and drafting operations have been included in the emergency regulation. The expertise of DFW staff involved in the review of 1600 permits would be relied upon to assure that conservation of water resources is attained when water drafting is proposed and requires coverage under Section 1600 of the Fish and Game Code. Additionally, the prescriptive standards requiring description of drafting proposals will allow both *CAL FIRE* and DFW the ability assess potential impacts to waters of the state in light of the severe drought conditions.

Section 916.2 [936.2, 956.2] (d). Protection of the Beneficial Uses of Water and Riparian Functions

This proposed amendment clarifies that the emergency regulation applies to water drafting operations.

Section 916.2 [936.2, 956.2] (d)(1).

This proposed amendment requires compliance with Fish and Game Code Section 1600 (Streambed and Alteration Permit) for water drafting operations that are associated with all commercial timber harvest activities.

Section 916.2 [936.2, 956.2] (d)(1)(A).

This proposed amendment recognizes that some landowners within the state have entered into long term agreements with DFW that covers the activity of water drafting. These landowners would be exempt from the provisions of this emergency regulation if proof of compliance through other long term agreements can be provided to the *CAL FIRE* and DFW.

Section 916.2 [936.2, 956.2] (d)(2).

This proposed amendment requires that RPFs provide a description of both the water drafting site(s) condition and the water drafting operations in Plans submitted to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(A).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes a general description of the conditions at the water drafting site(s) and water drafting activity within a Plan submitted to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(B).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes a map showing proposed water drafting locations within a Plan submitted to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(C).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes the classification of the watercourse(s) in which water drafting is proposed within a Plan submitted to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(D).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes discussion of the various operational parameters that will be adhered to during water drafting operations. These parameters include the months of proposed drafting, an estimate of total volume of water to be utilized a day, an estimate of the maximum instantaneous rate of drafting and filling time and the disclosure of other drafting activities within the watershed. This information shall be included in a Plan prior to submittal to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(E).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes identification of the area remaining in the drainage, in acres, above the point of proposed drafting. This information shall be included in a Plan prior to submittal to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(F).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes information addressing an estimate of unimpeded streamflow, pumping rate and duration of drafting from each proposed point of diversion. This information shall be included in a Plan prior to submittal to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(G).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes an analysis of the effects on downstream aquatic habitat from all pumping operations at each point of diversion, as well as, all drafting operations with the watershed. This information shall be included in a Plan prior to submittal to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(H).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes a discussion of proposed alternatives and measures to prevent adverse effects to fish and wildlife resources and other beneficial uses of water. These alternatives include a reduction in hose diameter, using gravity fed tanks in lieu of pumping, reduction in the rate of instantaneous pumping, describing allowances for recharge time, utilization of alternative dust palliatives, and drafting water from alternative locations. This information shall be included in a Plan prior to submittal to *CAL FIRE*.

Section 916.2 [936.2, 956.2] (d)(2)(I).

This proposed amendment clarifies that the required description provided by the RPF, as required in Section 916.9(2)(d) [936.9(2)(d), 956.9(2)(d)], includes a discussion of the methods to be used to measure source streamflow prior to drafting operations and the condition(s) that would trigger streamflow to be measured during operations. This information shall be included in a Plan prior to submittal to *CAL FIRE*.

IV. DISCLOSURES AND DETERMINATIONS REGARDING THE REGULATIONS

Estimate of costs or savings to any state agency: State costs or savings are not expected to vary significantly from current levels under existing regulations.

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500 of Division 4): The proposed regulation does not impose a reimbursable cost to any local agency or school district.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impact on private persons or those directly affected by the regulation:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant adverse economic impacts on business including the ability of California business to compete with business in other states: The Board has determined small businesses are unlikely to notice any effect from the proposed emergency rulemaking and therefore the proposed emergency regulations would not affect California businesses to compete with business in other states.

Significant effect on housing: None.

Alternatives considered:

Alternative #1: No Action – Do Not Adopt Emergency Regulation

This alternative would result in no change to the existing Forest Practice Rules for proposed water drafting operations in watersheds that do not host listed anadromous fish.

species. This action would potentially result in significant reduction to localized surface water resources in watersheds where commercial timber operations occur during the current emergency drought conditions. Impacts associated with this alternative could be significant in terms of effects to recreational opportunities and biological aspects of downstream aquatic habitats. Other potential impacts include reduced recharge capacity of long term water storage facilities that are utilized for domestic purposes or emergency fire suppression activities.

Alternative #2: Adopt the Proposed Emergency Regulatory Amendment that Suspends all Water Drafting Activity

This alternative would result in abating any and all previously mentioned potential impacts associated with water drafting activities where compliance with Section 1600 of the Fish and Game Code is required. Adoption of this alternative would affect all watersheds where commercial timber harvesting occurs within the State. However, the effect of adopting such a regulation poses significant impacts to public health and safety, as well as representing substantial fiscal impacts to rural economies.

In regards to public health and safety, persons utilizing seasonal roads, including employees of Licensed Timber Operator, RPFs, residents of rural communities or other person with rights to ingress and egress, would be exposed to a significant safety hazard as a result of dust created during use of roads commensurate with commercial timber operations. Dust accumulations, particularly on days of low wind conditions, will persist along road corridors making visibility difficult. Heavy dust accumulations mixed with intense solar conditions of summer months can create glaring and the inability to see oncoming traffic or other road hazards that create dangerous and potentially life-threatening conditions.

Fugitive dust created along seasonal roads from extended and consistent use, without application of dust abatement treatment, can cause ailments to respiratory health. Again, persons that utilize the road systems, or person living in proximity to such road systems, could experience issues with difficulty in breathing. Extend exposure to ambient air conditions that are infused with particulate matter in the form of dust, which can also be transported atmospherically through wind events, can result in respiratory challenges.

Fugitive dust also accumulates on road shoulders, road surfaces, vegetative cover, structures, vehicles, rock outcroppings or other natural or anthropogenic features that are in proximity to high use seasonal roads surfaces that are not treated for dust abatement. These accumulations, when in close proximity to watercourses or lakes, can be rapidly delivered to waters of the state upon the first significant rainstorms when overland flow occurs during fall or winter months.

Alternative management practices for dust abatement treatment are available. While chemical applications, such as magnesium chloride or calcium chloride, are an option, they are prohibitively expensive to utilize along every seasonal road system where timber operations will continually occur over the coming summer months. This practice is generally used along mainline haul roads where trucking of forest products will occur through the summer and fall months. This limited use is due to the extreme cost of transport and application of chemical treatments. In addition, the initial application of chemical treatments does require large quantities of water, in which case drafting will still likely be required in many instances. Once applied, the quantity of water utilized along

chemically treated roads is lessened; nevertheless, water is still required to maintain the effectiveness of chemical treatments. Therefore, water drafting would often still be required throughout the use of treated road systems.

Alternative #3: Adopt a Regulatory Amendment Through the Standard Rulemaking Process

This emergency regulation was adopted in light of the emergency drought declaration as proclaimed by the Administration and upon request of *CAL FIRE*. Under PRC 4554.5, rules and regulations adopted or revised pursuant to this chapter shall become effective on the next January 1 that is not less than 30 days from the date of approval of those rules or regulations by the Office of Administrative Law. Therefore, any regulation adopted under the standard rulemaking process would not be enacted until the winter of 2016. Given that the state is currently approaching the summer months, when drought conditions will be at their most heightened state, it is imperative that conservation measures as they relate to water resources be implemented expeditiously. The standard rule making process does not afford the Board of Forestry and Fire Protection the latitude to address the problem at hand given the time restraints offered under state law.

Local Mandate Determination:

Assessment Statement: In accordance with Government Code Section 11346.3, the following are required responses, since state agencies proposing to adopt or amend any administrative regulations must assess whether and to what extent it will affect the following:

- (a) **The creation or elimination of jobs within the State of California:** The regulation is not expected to create or eliminate jobs.
- (b) **The creation of new business or the elimination of existing businesses within the State of California:** None.
- (c) **The expansion of businesses currently doing business within the State of California:** None.

Assessment Statement: In accordance with Government Code Section 11346.5(a)(5), the following is a required response.

- (a) The proposed action does not impose a mandate on a local agency or school district that requires reimbursement pursuant to Gov. Code sec 17500 et seq.

Assessment Statement: In accordance with Government Code Section 11346.5(a)(3)(C), the following is a required response.

- (a) The benefits of this action include the conservation of water resources for the protection of the beneficial uses of water for purposes including, but not limited to, flora and fauna of the state, domestic utilization and fire suppression activities.

Assessment Statement: In accordance with Government Code Section 11346.5(a)(3)(D), the following is a required response.

(a) The proposed emergency regulation is not inconsistent or incompatible with existing state regulations.

Effect on Small Business: The adopted emergency regulation is not expected to adversely affect small business.

1
2 **Board of Forestry and Fire Protection**

3 **“Water Drafting Emergency Regulations, 2014”**

4 **Title 14 of the California Code of Regulations (14 CCR),**

5 **Division 1.5, Chapter 4, Subchapters 4, 5, & 6, Article 6**

6
7 **AMEND:**

8 **§ 916.2 [936.2, 956.2] Protection of the Beneficial Uses of Water and Riparian**
9 **Functions**

10
11 ***

12 (d) **Water drafting** - Water drafting for timber operations shall:

13 (1) Comply with Fish and Game Code Section 1600, et seq.

14 (A) Timber operations conducted under a Fish and Game Code
15 Section 1600 master or long-term agreement that includes water drafting may provide
16 proof of compliance with 14 CCR § 916.2 [936.2, 956.2] (d)(1).

17 (2) Describe the water drafting site conditions and proposed water
18 drafting activity in the plan, including:

19 (A) a general description of the conditions and proposed water
20 drafting;

21 (B) a map showing proposed water drafting locations;

22 (C) the watercourse classification;

23 (D) the drafting parameters including the months the site is
24 proposed for use; estimated total volume needed per day; estimated maximum

1 instantaneous drafting rate and filling time; and disclosure of other water drafting
2 activities in the same watershed;

3 _____ (E) the estimated drainage area (acres) above the point of
4 diversion;

5 _____ (F) the estimated unimpeded streamflow, pumping rate, and
6 drafting duration;

7 _____ (G) a discussion of the effects on aquatic habitat downstream from
8 the drafting site(s) of single pumping operations, or multiple pumping operations at the
9 same location, and at other locations in the same watershed;

10 _____ (H) a discussion of proposed alternatives and measures to prevent
11 adverse effects to fish and wildlife resources and other beneficial uses of water, such as
12 reducing hose diameter; using gravity-fed tanks instead of truck pumping; reducing the
13 instantaneous or daily intake at one location; describing allowances for recharge time;
14 using other dust palliatives; and drafting water at alternative sites; and _____

15 _____ (I) The methods that will be used to measure source streamflow
16 prior to the water drafting operation and the conditions that will trigger streamflow to be
17 measured during the operation.

18

19 Authority: Authority cited: Sections 4551, 4562.7 and 21000(g), Public Resources Code. Reference:
20 Sections 751, 4512, 4513, 4551.5, 21000(g), 21001(b) and 21002.1, Public Resources Code; Sections
21 100, 1243 and 13050(f), Water Code; and Sections 1600 and 5650(c), Fish and Game Code.