

BOARD OF FORESTRY AND FIRE PROTECTION

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To: Board of Forestry and Fire Protection

From: Edith Hannigan, Board Analyst

Date: March 28, 2016

Re: Range Management Advisory Committee

The Range Management Advisory Committee (RMAC) met on Tuesday, March 8 in Sacramento.

- **Presentations:** RMAC heard a presentation from Leslie Roche, UC Davis and UC Cooperative Extension Rangeland Specialist, on current research and upcoming publications. Tom Frolli, US Forest Service Range Program Manager, spoke on the status of federal rangeland and grazing allotment leases.
- **Water Diversion Reporting Requirements:** The State Water Resources Control Board (SWRCB) released draft emergency regulations to implement SB 88, which expands the measuring and reporting requirements for water diverters during times of drought. SWRCB anticipated sending these regulations to the Office of Administrative Law (OAL) as emergency regulations on March 9. RMAC reviewed the proposed regulations and directed staff to write a comment letter suggesting that stock ponds be excluded from these reporting requirements and that the reporting threshold of 10 acre-feet be raised to 25 acre-feet or higher on several bases:
 1. The costs to the regulated public of installing measuring devices and the costs to the State to enforce the regulation of stock ponds and small diverters is disproportionate to any benefit received from such monitoring.
 2. The environmental benefit posed by stock ponds would be lost if producers decided the costs of this regulation were too great and drained their stock ponds to find alternative water sources for their livestock.
 3. The difficulties and near-impossibility of reporting from remote locations without cell phone service, electricity, or physical access in winter and spring. In addition, installing devices to measure diversions on US Forest Service land would require a National Environmental Policy Act (NEPA) study, which would be cost prohibitive to many ranchers who lease Federal lands.

The regulations were noticed as emergency regulations with OAL on March 10, 2016, and the attached letter was submitted on March 14, 2016.

- **Board Policies 0335 and 0351.6:** RMAC would like to bring revisions to Board policies 0335 Range Improvement and 0351.6 Special Uses of State Forests forward for the Board's consideration.

RMAC has identified, as an ongoing and worsening issue, the availability of public lands for grazing allotments. To further their efforts in promoting grazing on public lands as a fuel management and ecological tool, RMAC evaluated the Board's and Department's policies on

grazing on state demonstration forests and found it to be restrictive and discouraging of grazing on the forestlands. RMAC felt that the existing policies did not adequately allow for management of the state demonstration forests as defined in PRC 4645 and 4639:

4645. The department, in accordance with plans approved by the board, may engage in the management, protection, and reforestation of state forests.

4639. "Management" means the handling of forest crop and forest soil so as to achieve maximum sustained production of high quality forest products while giving consideration to values relating to recreation, watershed, wildlife, range and forage, fisheries, and aesthetic enjoyment.

Given the Board's mandate to retain state forests for research and demonstration (PRC 4631.5), the existing policy language excludes an important land management tool from study in timberland. In the context of research and demonstration, grazing is a valuable tool that should be available to forest managers for land management and for study of the impacts of grazing on forest health. By updating these policies to allow grazing, with caveats, on state demonstration forests, the Board separates grazing from extractive activities, such as mining, and concession/vendor activities that the Board has deemed inappropriate for state forest land.

At their March 8 meeting, RMAC approved bringing the attached language to the Board for discussion and consideration for adoption at the April 6 or a future meeting. RMAC also revised the related CAL FIRE policies (5022 Fuel Management, 5024.2 Stray Animal Trespass, 5052 Mining, Water, Etc, and a draft new policy, 5053 Livestock Grazing) on this topic to ensure consistency, which are also attached. Additions are in red text and underline, deletions are in red text and strikethrough.

Board of Forestry and Fire Protection Policies Suggested Revisions

Range Improvement 0335

The Board has adopted the following policy:

The wildlands of California are important as a source of water, timber, minerals, wildlife, recreation, and forage. A portion of these wildlands consists of brush-covered lands, some of which may be adaptable to conversion from a brush range type cover to a more suitable forage cover. This conversion of brush lands may be accomplished by a number of methods, including mechanical tools, herbicides, prescribed grazing, and fire, singly or in suitable combination, each being used in its appropriate place in the process.

The Director, in the development, management, and conservation of the natural resources, and in the interest of range improvement, should encourage the use of plans in range improvement projects which are designed to enhance their value for fire hazard reduction and fire control, stabilization of soil, water conservation and production, and improvement of rangeland, forestland, and habitat by incorporating:

- A. The use of livestock grazing to minimize fuel loads and maintain understory vegetation;
- B. The development and improvement of brush-covered lands as an overall project involving site selection, ~~clearing the lands of~~ modification of undesirable vegetation, revegetation ~~following clearing~~, application of effective follow-up measures and use of appropriate range management practices;
- C. The practical application of methods in range improvement determined through experimentation, including the use of fire and its application in combination with other methods, and in revegetation of denuded wildland areas for soil erosion control.

Special Uses of State Forests 0351.6

Special uses of State forests will be permitted only when there is a clear benefit to the State and when such uses do not conflict with primary (uses) programs of timber management, demonstration, research, and recreation. Such concessions must be consistent with this policy and receive written permission of the Forest Manger. The Forest Manger may require mitigations to any concession to ameliorate potential impacts on the forest.

A. Use of State forests for mining, ~~grazing~~, and commercial concessions is discouraged without a clear management benefit. Concessions on State Forestlands means:

- ~~a.~~ The privilege of maintaining a subsidiary business within the forest, or
- ~~b.~~ The space allotted for such a business, or
- ~~c.~~ The business itself.

Examples of concessions that are discouraged:

- ~~1.~~ Those that require kiosks or other structures.
- ~~2.~~ Those that are commercial in nature, i.e. the operation is tied primarily to commercial revenue generation (e.g., vendors that sell souvenirs or food) instead of a symbiotic relationship with one of the mandated uses of the State Forests in which the main objective is not to make a profit but rather foster activities that are compatible with the mandated uses of the State Forests (youth recreation camps, recreation events).
- ~~3.~~ Mining

- ~~4. Grazing, except where such use has been traditionally recognized on the property, or an there is an existing agreement, or where necessary for research or management (e.g., herbivory to reduce hazardous fuels)~~
- 5. Those that have no clear connection to the role of the state forest in forestland management, demonstration, research, and recreation.

B. Use of State forests for grazing or browsing by appropriate livestock species shall be allowed pursuant to PRC 4656. Grazing shall be allowed on state forestlands with an approved permit in the following instances:

- Grazing has been traditionally recognized on the property;
- There is an existing grazing agreement on the property;
- Grazing is in conjunction with a research project;
- Grazing provides a management benefit to the property (e.g. prescribed herbivory to manage vegetation, improve soil health, and/or achieve other ecological goals).

B. C. Although the State Land Commission has primary jurisdiction over geothermal resources on state forests, surface operations of geothermal developers will be strictly controlled by the department in accordance with regulations adopted by the Board contained in 14 CAC Section 1500-1503.

Department of Forestry and Fire Protection Policies Suggested Revisions

Fuel Management 5022

The state forests present a prime opportunity for CDF to plan, implement, and demonstrate the effectiveness of a fuel management program. Fuel management is an integral and important part of fire protection and should be pursued as actively as fire prevention and fire suppression in the state forests. There is a need to manage and control accumulations of dead and living vegetation in the forests to decrease the probability of destructive, high-intensity wildfires and to plan, construct, and maintain strategically located fuelbreaks. Prescribed burning, as well as pile and burn, ~~and~~ mechanical methods, and prescribed grazing should be considered as a tool for accomplishing fuel management.

Slash abatement methods may vary from one forest to another, depending upon local conditions and hazards involved. Slash abatement requirements will equal or exceed the local forest practice rules and will be specified in timber sale agreements.

A program to fell snags in other than timber sale areas, especially along roads and other strategic locations, should be developed and implemented, using conservation camp and other CDF resources. Snags with wildlife value should be retained in accordance with applicable district forest practice rules.

Stray Animal Trespass 5024.2

Livestock should not be permitted to range over state forestland except under some approved grazing permit. PRC §4656 provides that the use of state forestlands for grazing purposes will be permitted only under rules and regulations established by the board. See Section 5053. Grazing has not been encouraged in conjunction with other uses, and no rules or regulations for grazing use have been adopted (see Section 5052).

Mining, Water, Etc. 5052

No person or party will be allowed to make use of state forestlands or products except as permitted by law. All persons making requests to use property or products in some manner not clearly prescribed will be courteously received and requested to address their request in writing to the forest manager or the region chief. Department officials will attach all available information pertinent to the request and transmit it with their recommendations to the Director. Requests for special uses of state forests must be reviewed for compatibility with other uses and purposes for which the forest was acquired. Any urgency in requests regarding ~~grazing and~~ mining should be discouraged inasmuch as such uses have to be governed by rules and regulations established by the Board. ~~It is unlikely that the board will adopt rules or regulations regarding grazing in accordance with PRC 4656 until there is a bona fide case pending which clearly demonstrates the need for developing such rules or regulations.~~

The use and development of water facilities for irrigation and power will be permitted on state forests as provided by law (see Section 5024).

LIVESTOCK GRAZING 5053

Use of State forests for grazing or browsing by appropriate livestock species shall be allowed pursuant to PRC 4656. Grazing shall be allowed on state forestlands with an approved permit in the following instances:

- Grazing has been traditionally recognized on the property;
- There is an existing grazing agreement on the property;
- Grazing is in conjunction with a research project;
- Grazing provides a management benefit to the property (e.g. prescribed herbivory to manage vegetation, improve soil health, and/or achieve other ecological goals).

RANGE MANAGEMENT ADVISORY COMMITTEE

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March 14, 2016

State Water Resources Control Board
 C/o Nathaniel Weaver
 P.O. Box 100
 Sacramento, CA 95812-0100

Office of Administrative Law
 C/o OAL Reference Attorney
 300 Capitol Mall, Suite 1250
 Sacramento, CA 95814

Via email

Re: Measuring and Reporting Water Diversions, 23 CCR §§ 907, 908, 910, 911, 912, 915, 916, 917, 920, 922, 924, 925, 929, 931, 931.5, 932, 933, 934, 935, 936, 937, 938

Dear Mr. Weaver and OAL Attorneys,

The Range Management Advisory Committee would like to issue comment on the emergency regulations currently under review by the Office of Administrative Law titled Measuring and Reporting Water Diversions, affecting 23 CCR §§ 907, 908, 910, 911, 912, 915, 916, 917, 920, 922, 924, 925, 929, 931, 931.5, 932, 933, 934, 935, 936, 937, 938.

The Range Management Advisory Committee (RMAC) is a statutorily derived committee (Public Resources Code § 741) which advises the Board of Forestry and Fire Protection, the Natural Resources Agency, the California Environmental Protection Agency and the California Department of Food and Agriculture on rangeland resources. It is the only committee in State government that specifically addresses range issues. The mission of RMAC is to be an advocate for the sustained management of California's rangeland through the promotion of scientifically and economically sound regulation and policy.

RMAC has several concerns with the above regulations as noticed with OAL on March 10, 2016. RMAC suggests that stock ponds be excluded from these reporting requirements and that the reporting threshold of 10 acre-feet be raised to 25 acre-feet or higher on several bases:

1. The costs to the regulated public of installing measuring devices and the costs to the State to enforce the regulation of stock ponds and small diverters is disproportionate to any benefit received from such monitoring.
2. The environmental benefit posed by stock ponds would be lost if producers decided the costs of this regulation were too great and drained their stock ponds to find alternative water sources for their livestock.
3. The difficulties and near-impossibility of reporting from remote locations without cell phone service, electricity, or physical access in winter and spring. In addition, installing devices to measure diversions on US Forest Service land would require a National Environmental Policy Act (NEPA) study, which would be cost prohibitive to many ranchers who lease Federal lands.

Costs to the regulated public

RMAC is concerned the economic costs of this regulation on the public have not been adequately evaluated. The STD 399 and Appendix 1 on the SWRCB website and the Notice file posted on OAL's "Proposed Emergency Regulations Under Review" website do not include an analysis of the number of water right holders and claimants who would be impacted by this regulation, and do not analyze of the costs of implementation, ongoing measurement, or reporting.

In order to meet the requirement in 23 CCR § 932(a) to "...install and maintain a measuring device or employ a measurement method capable of measuring the rate of diversion, rate of collection to storage, the rate of withdrawal or release from storage, **and** the total volume of water diverted or collected to storage" (emphasis added) and the definitions of "measurement method" and "measurement device" in 23 CCR § 931, the regulated public must install measuring and monitoring devices that far exceed the capabilities of staff gauges, in-line flow meters, and other suggested tools in STD 399 Appendix 1 Table 3 and page 54 of the Notice. As a result, small diverters may invest in more rigorous measurement technology to avoid enforcement

action. The construction, installation, calibration, and maintenance costs of installing equipment adequate for the requirements in 23 CCR §§ 931 and 932 can exceed \$20,000, in addition to the ongoing costs of measuring water flow, interpreting that data, and reporting that information to the State. In 23 CCR § 932(d), the Deputy Director is delegated the authority to increase the 10 acre-feet measurement threshold beginning January 1, 2017; RMAC suggests this threshold be raised immediately to provide economic relief to small diverters, particularly those diverting water for stock ponds. There is also no analysis of the fiscal impacts to the State to analyze data associated with these reporting requirements, perform quality control of data, issue reports, and the implementation of enforcement mechanisms for the number of water rights holders/claimants that divert 10 acre-feet or more. It would be in the State's economic interest to raise the reporting threshold for diverters to 25 acre-feet or higher. The costs to both the regulated public and the State make the reporting requirement for 10 acre-feet diversions unnecessarily burdensome.

Environmental benefits posed by stock ponds

Stock ponds provide important habitats for a variety of wildlife and aquatic species, including state and federally listed species and species reliant on California's diminishing wetland ecosystems. Irrigated pastures reduce fuel loads and provide "greenbelts" that protect humans and habitat from wildfire. Degradation of wetlands and riparian areas throughout the State have forced endangered species such as the California red-legged frog and California tiger salamander to rely on man-made ponds.¹ Given the costs to comply with this regulation described above, ranchers who have other options for watering their herd will drain their ponds and the species that rely on them, particularly threatened and endangered, will decline. If this happens, the water system in California will also lose the groundwater recharge benefits that stock ponds provide. Stock ponds keep water in streams for other uses and benefits besides livestock drinking water and pasture irrigation, the benefits of which would be reduced if stock ponds disappeared and more water was pulled from streams for livestock and pasture.

Access and other regulatory constraints

Many water diversions, particularly those on US Forest Service land, are in remote areas of the state with access and communication limitations. During winter and spring months, snowfall closes roadways and creates generally unsafe driving conditions. Electricity may be fifteen or more miles away and there is no cell phone service, so it would be impossible to transmit diversion readings electronically when physical access is limited. The alternative compliance plan presented in 23 CCR § 935 does not provide sufficient relief for diverters facing such limitations and does not provide truly feasible alternative methods of compliance. In addition, any installation of monitoring equipment on federal land would require NEPA compliance, which would impose additional costs on the regulated public that are not reflected in the SWRCB's economic impact analysis.

RMAC recommends SWRCB raise the reporting threshold to 25 acre-feet or higher pursuant to Water Code § 1840(b). RMAC finds that:

- Strict compliance *is* unfeasible, unreasonably expensive, and would unreasonably affect public trust uses, as demonstrated above (WC § 1840(b)(1)(A)).
- The benefits of additional information within watersheds or subwatersheds *are* substantially outweighed by the costs of installing measuring devices or other methods for measuring diversions at the 10 acre-foot threshold, as demonstrated above (WC § 1840(b)(2)).

Raising the reporting threshold would reduce the economic burden on many ranching and livestock operations that utilize stock ponds for their economic and environmental benefits. Because small diverters are already granted a delayed implementation date of January 2018 (23 CCR § 932(c)(1)(C)), there will be limited additional information for the Deputy Director to review when considering whether to raise the reporting threshold in January 2017 than has already been presented. Waiting until 2017 to raise the reporting threshold leaves those who divert between 10 and 25 acre-feet in limbo, unsure if they need to contemplate the costs of compliance with these regulations versus draining stock ponds and utilizing alternative water sources for their operations.

Thank you for the opportunity to comment on these proposed emergency regulations. RMAC appreciates the ongoing engagement by the SWRCB on this issue and looks forward to further participation in the rulemaking process.

Sincerely,

Marc Horney, CRM, PhD
Lesa Osterholm
RMAC Co-Chairs

¹ Ag Innovation Network, "Stock Pond Restoration and Permit Coordination," *Resources for Change*, November 2010