

BOARD OF FORESTRY AND FIRE PROTECTION

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**Forest Practice Committee Meeting Report**

Note: agenda items appear below in the order in which they were discussed by the assembly.

FOREST PRACTICE COMMITTEE**April 6, 2010****Time: 8:00 p.m. – 12:00 p.m.**

Location: **Resources Bldg.**
Auditorium
Sacramento, California

In attendance were FPC Chair Gary Nakamura and Board member Lloyd Bradshaw. Member Jim Ostrowski was absent.

Agenda #1: Road Rules: Review of Anadromous Salmonid Protection rules related to roads and the Road Rules Task Force (RRTF) regulatory proposal.

Board staff Chris Zimny introduced the information documents that were the subject of the meeting. Of focus for the meeting was 1) revisions to the RRTF plead made in the March 2010 FPC to section 923 and 923.1; 2) a list a issues (based on public comments received and Board staff review on section 923.1 and 923.2 and 3) comments from DFG on proposed changes to proposed to sections 923.1 and 923.2.

Mr. Zimny also announced that the FPC has requested Pete Cafferata of Cal Fire and Drew Coe of the Central Valley Regional Water Quality Control Board be assigned to the FPC and serve as the FPC's science advisors for the road rules review.

Prior to the discussion of the road rules sections, Member Bradshaw discussed letters he received from an RPF and California Forestry Association related to amendments needed for sections 914.7 and 923.1 of the existing FPRs. The letters request regulatory amendments to address unintended consequences resulting from changes made in 2009 to the "saturated soils" and "stable operation surface" definitions. The amendments made in 2009 extracted from the definition resultant environmental impacts (e.g. turbidity in watercourses) and solely retain the characteristics/definition of a stable operating surface or saturated soils (e.g. pumping of water from soil fines). In doing this, section 914.7 and 923.1 now prohibit any operations on saturated soils and the letters suggest this is an unintended purpose of the 2009 amendments. While the adopted changes in 2009 resulted in reducing risks to environmental impacts, they may have unnecessarily restricted certain operations on saturated soils (e.g. loading/sorting logs on ridge top landings not near watercourses) which would not have an impact on any environmental conditions (e.g. water quality). The FPC agreed to agendize this topic for the May 2010 FPC meeting.

The FPC next reviewed last month's revisions to the "Intent" sections (14 CCR 923) and "Planning for Logging Roads and Landings" (923.1 -923.1. (a)) Minor grammatical edits were recognized which staff will correct.

The FPC next reviewed the remaining subsection of "Planning for Logging Roads and Landings" (923.1(b) - 923.1. (f)). Also sections 923.2 "Design and Implementation for Logging Roads" was discussed. This discussion was organized around a list of "issues" published by staff and

by public comment brought forward by DFG. Approximately five primary discussion points that may lead to revision to the RRTF proposal resulted from this discussion:

923.2 (a) (5)

1. The DFG made recommendations for this section regarding construction standards to hydrologically disconnect watercourses from roads by requiring outsloping, building rolling or surface rocking. The FPC suggested that this topic be reconsidered in subsequent sections on maintenance and construction section.
2. The FPC suggested consideration of inserting the term “hydrologic disconnection” to this section, as proposed by the DFG public comment. California Geologic Survey representative Tom Spittler will develop potential wording for this change. Additionally, Deputy Chief Duane Shintaku of Cal Fire recommended other reorganizational and structural changes for this subsection. Finally, the word "deleterious quantities" was discussed. This term is interchangeably used with other similar terms throughout the FPRs and has not provided clarity for field interpretation. The committee discussed replacing this term with other standardized CEQA terminology, such as significant adverse environmental effects”, currently used in the FPRs or other terminology consistent with CWA/Porter Cologne Act/NCRWQCB basin plans such as “prohibit sediment discharges that threaten to violate Water Quality Requirements as defined in the Regional Water Quality Control Board Orders”. Member Bradshaw noted that such changes for consistency with the North Coast Regional Water Quality Control Board policy should be considered only when reciprocal conditional waivers for timber harvest plans are developed by the NCRWQCB.

923.1 (b)

1. There was discussion regarding the appropriate distance that roads and landings be located from watercourses. The distance proposed under this section requires that roads and landings not be constructed or reconstructed in a WLPZ (with exceptions). It was also noted that in section 923.4 (m), logging roads and landings shall not be constructed within 100 feet of the boundary of a WLPZ on slopes greater than 50%. Discussion amongst FPC members and the public centered on what the current scientific literature states about this topic. Also Member Bradshaw noted that the regulation for this requirement should be flexible and based on site-specific conditions. Considerations should include slope, geology and groundcover. The FPC recommended that its science literature consultants, Pete Cafferata and Drew Coe, brief the FPC in May on this topic.

923.1 (f) and (g)

1. The FPC preferred the use of Option 1 because it adds requirements for off setting mitigation measures that are needed to minimize potential adverse impacts to watersheds from system.
2. The FPC noted that these two sections address requirements and limitations for road construction. The committee asked Cal Fire Deputy Chief Chris Browder to review and potentially consolidate the sections.

923.1 (d) and 923.2 (f)

1. Subsection 923.1 (d) as proposed by the RRTF requires field examination of roads relative to various sensitive conditions. Where roads interact with sensitive conditions, the RPF is required to describe and implement feasible protection measures for the sensitive

conditions. DFG comments suggested alternate language for this section that addresses assessing all roads within the plan area and appurtenant roads proposed for use. Additionally, the DFG recommends new language to be inserted in 923.1 following section (f) for ASP related watersheds for identifying and assessing potential sediment sources for roads. The committee also noted that subsections 923.2 (f) 1. -- 3 have similar requirements. These requirements for the various sections will be reviewed together at the next committee meeting for completeness and redundancy.

Agenda #2: Discussion of items for next month's agenda, review of 2010 Priorities. Potential Agenda Items for April 2010:

The FPC identified the following items for the April 2010 RPC agenda.

1. Review of Anadromous Salmonid Protection rules related to roads and the Road Rules Task Force (RRTF) regulatory proposal. Complete reviews of proposed regulatory sections 923.1 Planning for Logging Roads and Landings and 923.2 Design and Implementation (Roads & Landings). Begin review of section 916.3 General Limitations Near Watercourses, 23.3 Mapping and Identification (Roads & Landings), 923.4 Construction and Reconstruction of Logging Roads and Landings, and 923.5 Erosion Control of Roads and Landings.

2. Potential amendments to Forest Practice Rules sections 914.7 and 923.1 resulting from changes made in 2009 to the "saturated soils" and "stable operation surface" definitions. **Possible Action Item:** Recommendation to the Board for publishing a 45 day notice of proposed rulemaking.

3. Discussion of next month's agenda and review of priorities.

FPC ISSUES FOR 2010

PRIORITY 1:

1. **Regulatory amendments for permanent T/I rules: Road rules:** *Consideration of regulatory recommendations made by the interagency road rules committee in October 2007.*
Objective/Status: Complete by end of 2010, in progress in FPC.
2. **Case NO: CGC-07-469244, struck down sections 916.9.2, 923.9.2, 936.9.2 and 943.9.2**
Repeal of regulations to remove from the FPRs subsections struck down by the Court.
Objective/Status: Complete by end of 1st quarter 2010; sent to board for adoption in Feb 2010. Section 100 filing pending receipt of final action from court by the BOF.
3. **Development of pilot programs for SERM projects** **Objective/Status:** *Complete process and guidelines by end of 2010; CAL FIRE holding monthly discussion meetings with members of the public and NFMS representative.*
4. **Regulatory amendments to Fire Tools and Civil Penalty regulations in FPRs: BOF**
adopted Final regulation and FSOR on 3/3/10. Staff will file with OAL..
5. **Aspen rules:** *Interpretations vary on opening size allowed for this method, needs clarification.*
Objective/Status: Complete by end of 2010, in progress in FPC.

6. **Restating FPRs in THPs:** Consider allowing the statement of compliance with specific rule section (s) by number, rather than using language out of the FPRs. New THP form under development, will be addressed. **Objective/Status: no progress to date.** .

PRIORITY 2:

7. **Other issues: Performance Based Systems Pilot Program, Forest Legacy Program Review/Regulations, Board of Equalization Liaison.** **Objective/Status: no progress to date.**

8. **Rule Interpretations**

14 CCR § 913.4(d) Variable retention rules do not specify reentry period for leave areas. Minimum age of application is the same as even age regeneration? **Objective/Status: no progress to date.**

Department disallows use of the Transition silviculture method when applied to stands which have been previously harvested utilizing the Selection method. Does not conform with 14CCR § 913.2(b) or (b)(2). Past harvest history should not be a condition of the application of any silvicultural prescription. THP was returned on this issue without being evaluated through PHI to support the determination. **Objective/Status: no progress to date.**

9. **Regulatory proposal development for rule monitoring requirements:** Pending. Phase 3. Rule development to begin in 2010. See also Policy #1 and 6. **Objective/Status: no progress to date.**

10. **Issues related to THP form and content**

(D09 #5)14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] [in part], The location of the areas of heavy equipment use in any ELZ shall be clearly described in the plan, or flagged or marked on the ground before the preharvest inspection. 14 CCR § 1034(x)(7), [On a plan map, show the location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing. 14 CCR § 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] requires RPF to clearly describe, flag or otherwise identify ELZ on the ground prior to the pre-harvest inspection. 14 CCR § 1034(x)(7) requires the RPF to map the location of all classified watercourse crossings except temporary dry Class III crossings. CAL FIRE recommends the Board amend the rules to delete the allowance in 14 CCR § 1034(x)(7). **Objective/Status: no progress to date.**

(D09 #10)14 CCR § 1034, Contents of Plan. **Objective/Status: no progress to date.**

(r), How the requirements of 14 CCR 1032.7(f) are to be met. The reference to 1032.7(f) is obsolete, since it refers to the past requirement that the RPF distribute and publish a copy of the NOI.

(x)(7), [On a plan map, show the location of all watercourse crossings of classified watercourses except temporary crossings of Class III watercourses without flowing water during timber operations at that crossing. (See above)

(x)(9), [On a plan map, show the location of all watercourses with Class I, II, III, or IV waters. This paragraph should be amended to add "and lakes."

(ii), On a map complying with subsection 1034(x), the locations and classifications of roads, watercourse crossings, and landings to be abandoned shall be shown. This subdivision should

be deleted and the mapping requirement should be incorporated as part of 14 CCR §1034(x), which applies strictly to mapping.

Board should consider amending 14 CCR § 1034 when it adopts or amends any rule that adds elements considered a required portion of a harvesting plan. This ensures a central location where the RPF could be assured of finding what is considered essential information in a harvesting document. Board may want to consider a rule package that consolidates all required plan contents under 14 CCR §§ 1034, 1051, 1090.5, and 1092.09.

(D09 # 9)14 CCR § 1032.7(d) [in part]. A Notice of Intent [NOI] shall include the following information: **(4)** the acres proposed to be harvested. **(5)** The regeneration methods and intermediate treatments to be used. **Objective/Status: no progress to date.**

(4) Board should amend this paragraph to include all acres where timber operations will occur, not just the area where timber will be harvested. In doing so, the Board should consider the current definition of logging area and the lack of a definition of plan area.

(5) Requires stating the regeneration methods and intermediate treatments to be used. This paragraph may not capture all possible treatments that may occur, e.g., special prescriptions and other types of associated timber harvesting, such as road right-of-way or timberland conversion.

(D09 # 9)14 CCR § 1032.10, The THP submitter shall provide notice by letter to all other landowners within 1,000 feet downstream of the THP boundary whose ownership adjoins or includes a Class I, II, or IV watercourse(s) which receives surface drainage from the proposed timber operations. The notice shall request that the THP submitter be advised of surface domestic water use from the watercourse, within the THP or within 1,000 feet downstream of the THP boundary. When required to notice by letter, publication shall also be given one time by the THP submitter in a newspaper of general circulation in the area affected by the proposed project. Such letter and publication shall notify the party of the proposed timber operation and describe its legal location and identify the name, if any, of the watercourse it may effect. The letter and publication shall request a response by the property owner within ten days of the post-marked date on the letter or the date of publication as appropriate. The RPF may propose, with justification and explanation, an exemption to such notification requirements, and the Director may agree. Copies of either notice, proof of service and publication, and any responses shall be attached to the THP when submitted. If domestic use is noted, the plan shall contain mitigations necessary to protect domestic water use. The plan shall not be submitted until ten days after the above notification(s) have been done. **Objective/Status: no progress to date.**

Overland flow or channel flow?

Publication may need to be given in a newspaper of general circulation. CAL FIRE assumes this requires notification as defined in Government Code §§ 6000-6027.

A tie should be made with the requirement to provide protection to domestic water supplies, as required per 14 CCR § 916.10 [936.10, 956.10].

Require more current notification in which the post-marked date is no more than one year prior to submittal of the plan.

Does a plan have to be returned where the RPF requests an exemption from one of the noticing requirements and CAL FIRE does not accept the request. The rule requires at least ten days passing after notification before submission of the plan.

The 4th sentence should be changed to use the proper verb, "affect," in place of "effect."

PRIORITY 3: Objective/Status: no progress to date.

11. Stocking levels: *too high for some forest types.*

12. **Should mechanical feller-bunchers be classified as "heavy equipment" in WLPZs?**
13. **Man made watercourses with fish (Class IV):** *what are the appropriate protections?*
14. **14CCR § 1038(c)(3) Slash removal interpretation:** *does the slash need to be removed from the subject property, rather than from within the actual timber operation?*
15. **Abolish in-lieu practices,** *current FPRs comprise minimum standards.*
16. **14 CCR § 914 [934, 954]** *Tractors shall not be used in areas designated for cable yarding except to pull trees away from streams.....Such exception (s) shall be explained and justified... Suggest replacing language to allow usage subject to the limitations of 14 CCR § 914 [934, 954].2 (f)- prohibitions on steep slopes.*
17. **(D09 # 7)14 CCR § 916.9(s) [936.9(s), 956.9(s)]** [in part], No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under exemption notices except for...

Should be considered in the context of 14 CCR § 1104.1(a)(2)(F), which allows conversion activities in the WLPZ where specifically approved by local permit. Defer to the county in these situations? Restriction of timber operations in the WLPZ affects timber operations conducted in compliance with defensible space regulations. There appears to be a conflict between this subdivision and PRC § 4291 and 14 CCR § 1299.

18. **Progeny Sites:** *These sites are usually planted over a long period of time 3-10 year period to get various age classes and seed sources. Some of the land may sit fallow for a number of years and not meet a 5 year stocking requirement. Exempt up to 40 acres from meeting the required stocking standard if the property owner designates that area for a progeny plantation.*
19. **1038 exemption:** *This rule allows post-fire timber operations to be "exempt from the plan preparation and submission requirements" which means that the public and decision-makers have little say in how this important forest resource (i.e., post-fire habitat) is protected. Therefore, to better achieve protection of post-fire habitat, this exemption should end. Because post-fire habitat has significant ecological value, there should be better guidance regarding what constitutes "significant adverse effects."*

End