

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**July 6, 2010****Time: 8:00 p.m. – 12:00 p.m.**

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

In attendance were FPC Board members Chair Gary Nakamura , Lloyd Bradshaw, Mark Andre and Jim Ostrowski.

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

The FPC continued its review of the Road Rules Task Force regulatory proposal. Issues discussed included 1) hydrologic disconnection, 2) operations and construction on saturated soils 3) rocking to prevent surface erosion, and 3) road rights-of-way and approvals for THPs.

Hydrologic disconnection/saturated soils: The Committee began on section 923.4 (s)(2) regarding hydrologic disconnection and road construction during wet weather periods with saturated soils. Discussion quickly focused on unintended consequences resulting from changes made in 2009 to the “saturated soils” and “stable operation surface” definitions in the ASP rules amendments made in 2009 that essentially prohibit any operations on saturated soils .

It was noted that saturated soils is a concern for road construction in two ways – soil erosion (a water quality concern) and an inability to properly compact roads for surface stability. The terms and condition for cessation of operations for construction and reconstruction rules are separate from “road use” rules. Major policy decision is: Is the default rule - no operations during saturated soil conditions, with exceptions? Or, operations allowed during saturated soil conditions, with exceptions/restrictions?

The Committee found that the California Department of Fish and Game (DFG) recommended language for 923.4 (s)(3) in the May 20th, 2010, plead version is not consistent with language in the RRTF proposal in 923.4 (j). 923.4 (j) has a similar restriction for construction on saturated soil. The Committee proposed deleting the DFG proposed section.

To address concerns about meeting compaction construction standards during road construction on saturated soils, amendments were added to 923.4 (j)(1) road construction on saturated soils, prohibiting operations on saturated soil when standard compaction methods cannot be accomplished.

California Geologic Survey (CGS) recommendations for amendments to subsection 923.5(a) and (b), Erosion Control for Road Use, to incorporate term *hydrologic disconnection* was next discussed. The subsection discusses erosion control and drainage facilities. The Committee recommended using portions of the CGS as option contained in the May 20, 2010, RRTF proposal in section 923.5 (a) regarding the drainage facilities to be hydrologic disconnected.

Road rocking: The Committee considered recommendations by DFG and CGS for rocking to reduce surface erosion. A major policy decision was considered— are statewide rules and standards (“necessary and feasible”) adequate to protect ASP watercourses? Or are prescriptive rules needed (DFG options, rock approaches to Class I and II crossings). Road rocking recommendations were by DFG and CGS in the May 20, 2010, RRTF version in subsection 923.5 Erosion Control for Road Use in subsections (p) and a new subsection to be reindexed as (i).

Amendments recommended by CGS for section 923.5 (i) address use roads during the extended wet weather period on a statewide basis. The Committee recommended the language be included.

Amendments proposed by DFG for rocking road watercourse approaches, ditches, roads used during the wet weather period, and roads in WLPZs for ASP watersheds were discussed for amendments in section 923.5 (p) (4)(A)-(E) and (5). The Committee noted the sections might be redundant to 923.5 subsection (j) through (n). Also inclusion of these sections may need to be considered in context of road rule proposals in 916.9 (k).

Comments from the Central Valley Regional Water Quality Control Board noted that the most critical area for surface erosion protection is discharge from watercourse crossings. The BOF Monitoring Study Group findings and other research literature indicated these are the locations where surface erosion cannot be effectively mitigated by hydrological disconnection.

FPC members discussed their preference of a site by site assessment to evaluate the location where approach rocking would be necessary. This will allow consideration of risk, including such things as steepness of road and discharge potential. Such an assessment would be consistent with proposed requirements for erosion site assessment rules. CGS representatives also mentioned that timing of use and type of soil material is critical for the risk of erosion potential. Mr. Pete Rebar of Campbell Timber Management noted that the subsections proposals require arbitrary winter dates to have rocking completed instead of considering weather conditions.

Committee members suggested that incorporating into the DFG proposal the phrase “where roads cannot be hydrologically disconnected” might be an appropriate edit. The FPC also noted they should review the watercourse crossing RRTF regulations in 923.10 through 16 prior to deciding on the road rocking approach proposals.

Road rights-of-way and approvals for THPs: An issue related to the road rules on approval of a timber harvest plan that utilizes private roads was raised by a member of the public. Information on the topic was conveyed by Deputy Chief of Forest Practice Duane Shintaku and Chris Browder. No action was taken by the FPC for any rule amendments at this time on this issue.

The FPC next considered the next meanings agenda. They indicated they will focus on surface erosion prevention (road approach and ditch rocking) and erosion site assessment. They noted that although the watercourse crossing rules have not yet been discussed, they should be considered in the context of the issues on surface erosion prevention and erosion site assessment since crossings are the leading source of sediment from roads.

Finally the FPC discussed requesting an additional date to hold a FPC meeting to focus on the Road Rules proposal. Staff reported that the Executive Officer prefers not to hold additional meetings due to financial constraints of the current time.

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 next FPC agenda.

1. Review of Anadromous Salmonid Protection rules related to roads and the Road Rules Task Force (RRTF) regulatory proposal. Focus is considerations of comments on: “surface erosion prevention (road rocking) ; and “erosion site assessment”, and watercourse crossings.
 2. Discussion of next month’s agenda and review of priorities.
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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. **Amendments to FPRs using definitions of “Saturated Soils and “stable operating surface”** *Proposal of regulatory changes to address unintended consequences resulting from changes made in 2009 to the “saturated soils” and “stable operation surface” definitions. Current rules prohibit operations on saturated soils. Objective/Status: Publish 45 day notice on July 2, 2010 for adoption in 2010.*
3. **Coho ITP Assistance Repeal** *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: Section 100 scheduled for July 2, 2010.*
4. **Regulatory amendments to Fire Tools and Civil Penalty regulations in FPRs:** *Objective/Status: BOF adopted Final regulation and FSOR on 3/3/10. Staff will file with OAL.*

PRIORITY 2:

5. **Site Index for major Young-Growth Forest Woodland Species in Northern California: Discussion of update to 14 CCR 1060 Site Classification.** *Objective/Status: FPC completed initial review of topic in April-June of 2010. FPC deferred additional work until road rules are completed.*
6. **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.*
7. **Aspen rules:** *Interpretations vary on opening size allowed for this method, needs clarification. Objective/Status: Staff planning field trip to review issue in 2010. Discussion at FPC deferred.*
8. **Regulatory amendments for permanent T/I rules: Cumulative Effects (14 CCR 916.9 (d)).** *Objective/Status: FPC to begin work following completion of T/I road rules. Estimated beginning in 2011.*

9. **Regulatory amendments for permanent T/I rules: Impaired Waterbodies/TMDLs. (14 CCR 916.12)** *Objective/Status: FPC to begin work following completion of T/I road rules. Estimated beginning in 2012.*
10. **Regulatory amendments for permanent T/I rules: Monitoring. (14 CCR 916.11)** *Objective/Status: FPC to begin work following completion of T/I road rules. Estimated beginning in 2012.*
11. **Consistency of NSO rules with USFWS guidance** *Objective/Status: FPC to begin work following completion of T/I road rules. Estimated beginning in 2012.*

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

12. **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.*
13. **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. .*
14. **Other issues: Performance Based Systems Pilot Program, Board of Equalization Liaison.** *Objective/Status: Other projects not in progress.*

15. 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.*

16. 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 affect. 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."

17. **Stocking levels**: *too high for some forest types. Objective/Status: no progress to date.*
18. **Should mechanical feller-bunchers be classified as "heavy equipment" in WLPZs?**
Objective/Status: no progress to date.
19. **Man made watercourses with fish (Class IV)**: *what are the appropriate protections?*
Objective/Status: no progress to date.
20. **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? Objective/Status: no progress to date.*
21. **Abolish in-lieu practices**, *current FPRs comprise minimum standards. Objective/Status: no progress to date.*
22. **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. Objective/Status: no progress to date.*
23. **(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... *Objective/Status: no progress to date.*
24. *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. Objective/Status: no progress to date.*
25. **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. Objective/Status: no progress to date.*
26. **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." Objective/Status: no progress to date.*

End