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State Water Resources Control Board

Executive Office

Tam M. Dodge, Chair

1001 J Street • Sacramento, California 95834 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax: (916) 341-5621 • <http://www.waterboards.ca.gov>

Arnold Schwarzenegger
Governor



Linda S. Adams
Secretary for
Environmental Protection

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

RECEIVED

JAN 24 2008

BOARD OF FORESTRY
AND FIRE PROTECTION

FROM: Dorothy Rice
Executive Director
EXECUTIVE OFFICE

DATE: January 24, 2008

SUBJECT: SCIENTIFIC LITERATURE REVIEW RELATED TO ANADROMOUS SALMONIDS

We are pleased that the Board of Forestry and Fire Protection (BOF) has undertaken a review of the scientific literature regarding the potential effects of timber operations on protection and restoration of aquatic habitat for anadromous salmonids. We supported the idea of forming a Technical Advisory Committee (TAC) to assist in the process of selecting a suitable consultant to perform the scientific literature review. Our Forest Activities Program Specialist, Gaylon Lee, who serves on the TAC, has briefed us on the progress of the TAC.

Due to initial budget limitations, the scope of the literature review has focused only on riparian functions, and the TAC took on unexpected work to narrow the amount of literature that must be reviewed by the consultant. In the process, the TAC produced comprehensive primers on key riparian functions, identifying what is currently known from the literature.

We believe that the Department of Forestry and Fire Protection (CalFire) has the opportunity to obtain literature review by highly qualified and credible experts. We further expect that the results of the literature review will accurately represent currently available science. As such, it will be quite valuable in: i) informing and refining the anadromous salmonid restoration goals and regulatory requirements of both CalFire and the affected Regional Water Quality Control Boards and ii) providing a common basis of understanding from which our agencies can cooperate.

George Gentry

- 2 -

January 24, 2008

We look forward to continuing our participation as BOF develops this scientific information into policy and refined regulations and as it engages in further similar review of the other aspects of timber operations that can affect aquatic habitat for anadromous salmonids.

If we can be of further assistance, please do not hesitate to contact me at (916) 341-5615 or Gaylon Lee at (916) 341-5478.

cc: Crawford Tuttle
Chief Deputy Director
California Department of Forestry and Fire Protection
P.O. Box 94424
Sacramento, CA 94244-2460

Jonathan Bishop
Chief Deputy Director
Executive Office
State Water Resources Control Board

Catherine Kuhlman
Executive Officer
North Coast Regional Water Quality Control Board

James Pedri
Assistant Executive Officer
Central Valley Regional Water Quality Control Board

Gaylon Lee
Forest Activities Program Specialist
Division of Water Quality
State Water Resources Control Board

L #2

ny, Chris

From: Terry Salvestro [Terry.Salvestro@fruitgrowers.com]
 Sent: Monday, February 18, 2008 10:04 AM
 To: Zimny, Chris
 Cc: Dan Fisher; Tom Young
 Subject: T&I Rules

Chris: Obviously this is a great opportunity. My biggest complaint with the T&I Rules has been the inability to Harvest under salvage exemptions or emergency notices in the WLPZ's. I would like to see some level of salvage after a fire. Tom Young, our Regeneration Forester has some great before and after pictures where we planted trees outside the WLPZ's following fire salvage but did not plant the WLPZ's (because we couldn't salvage). Gary N. (currently on the BOF) was with Tom. Let me know if you want to set up a tour of our burn with the board or a copy of Tom's power point presentation.

Terry at Fruit Growers Supply Co. in Hilt

L2-1

GROUP #5
LOG OPERS

February 26, 2008

FORESTLAND
MANAGEMENT

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



W. M. BEATY &
ASSOCIATES, INC.

845 BUTTE ST. / P.O. BOX 990898
REDDING, CALIFORNIA 96099-0898
530-243-2783 / FAX 530-243-2900

Via email to George.Gentry@fire.ca.gov

Comments regarding the Threatened or Impaired Watershed Rules

Dear Mr. Gentry:

In a letter dated February 13, 2008, Chairman Dixon requested that information concerning The Threatened or Impaired Watershed (T&I) Rules package be submitted to you. The T&I rule package was originally adopted as an interim approach to address concerns regarding forestry related impacts to habitat for anadromous salmonids. Several aspects of forest management were addressed including various issues related to riparian function and roads. The Scientific Review Panel report that provided the basis for this rule package emphasized its applicability only in coastal areas, yet the rules are applied to inland regions as well. These rules were intended to apply temporarily while a more site specific approach was developed. A watershed based approach that considered current watershed conditions, potential limiting factors for anadromous salmonids, and local geology, forest type, land use practices, climate etc. was considered to be a much more scientifically robust means for addressing the original concerns. The goal was to use a process that identified existing and potential impacts to watersheds and habitat for anadromous salmonids and take focused corrective or restorative action to reduce or eliminate these problems. Unfortunately, a watershed based "find it and fix it" process has not been established and the "interim" rules have continued to be extended year after year since their original adoption. W.M. Beaty & Associates, Inc. has repeatedly expressed these concerns and the inappropriate application of these rules to inland areas during the original rule making process and several subsequent extensions of these rules (see administrative record). To date, most of these concerns have not been addressed.

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GROUP 2
GEO

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GROUP #1

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GEO

Of even greater concern is that there has been no effort to determine if the T&I Rules actually provide any benefit to anadromous salmonids or result in improved watershed conditions. In fact, the opposite may be true and unintended consequences resulting in adverse impacts to other species may be occurring. Wildlife biologists and managers have long recognized that in order to sustain a diversity of species, a diversity of habitats must be available. Well established and recent research (Franklin et al. 2000, Obera and Hayes 2008) shows that homogenizing forest and vegetative structure at either end of the seral stage spectrum rarely optimizes wildlife habitat or species diversity. The one-size-fits-all nature of the T&I rules leads to the simplification of streamside habitats by requiring predetermined levels of canopy closure be maintained at or above 85% on

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LOG OPS

February 26, 2008

Class I watercourses. As noted by Obera and Hayes 2008, a reduction in bat species richness will result from homogenized riparian habitats that lack some openings and access to surface water.

The interim T&I rules adopted in 2000 were intended to provide short term measures to conserve anadromous salmonids while a watershed specific approach was developed. The interim nature of the one-size-fits-all rules reduced the risk of homogenizing streamside habitats in the long term. However as these rules have been applied for nearly a decade and appear to be about to become permanent, riparian habitat has been and will continue to be homogenized in the absence of management or other types of disturbance. The inevitable effects are reduced individual species fitness among some organisms and lower species richness at multiple spatial scales. Reduced primary productivity in the absence of solar radiation required for photosynthesis in Class I watercourses is yet another perverse outcome of the current T&I Rules and another example of how these rules may actually be causing watershed level impacts to multiple species at various spatial scales and among all trophic levels.

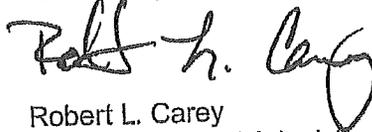
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L066'N6 OPS

Single species management rarely achieves conservation goals. We urge the BOF to review the T&I Rule package in its entirety and re-shape the regulations such that they consider multiple species and groups of species at multiple spatial scales. Flexibility is needed as is a large scale, long term consideration of watershed conditions.

L3-7
G-4
L06 OPS

Sincerely,

W.M. Beaty & Associates, Inc.



Robert L. Carey
Certified Wildlife Biologist

Franklin, A.B., D.R. Anderson, R.J. Guterrez, K.P. Burnham. 2000. Climate, habitat quality and fitness in northern spotted owl populations in northwestern California. Ecological Monographs. 70:539-590.

Obera, H. K. and J. P. Hayes. 2008. Influence of Vegetation on Bat Use of Riparian Areas at Multiple Spatial Scales. Journal of Wildlife Management. 396-404



February 27, 2008

California Board of Forestry and Fire Protection
Sacramento, CA
Attention: George Gentry, Executive Officer
george.gentry@fire.ca.gov

Re: Comments on the Threatened or Impaired Watershed Rules 14 CCR 916.9

Dear Mr. Gentry:

The foresters at Big Creek Lumber Company operating in the Southern Subdistrict welcome this opportunity to comment on the clarity and effectiveness of the Threatened or Impaired Watershed rules (T/I rules), relative to the selection harvesting practiced in our region.

The rules were hastily adopted in 1999 without serious regard to science or a demonstrated problem in connection with operations in the Southern Subdistrict. Although rigid and cumbersome, we have learned to work with most of these rules. However, the additional time spent on plan preparation and added expense of operations, compounded with the curtailment of manageable volume in the WLPZ has cost us dearly.

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L 4-2
G-4 L06 OPS

The T/I rules mandate a prescriptive approach to harvesting in watersheds where populations of listed anadromous salmonids are currently present or can be restored. Many watersheds on the Central Coast of California meet this description; therefore, the T/I rules are broadly applied in our region. However, the prescriptive measures called for in the rules are not tailored to the type of harvesting we practice, specifically light-touch single-tree selection harvesting, with low-key road infrastructure, that leaves an intact forest from the creek to the ridge top.

L 4-3
G-2 G-20
G-4 L06 OPS

Our chief complaint regarding the rules is that they do not allow adaptation relative to site-specific conditions, or permit flexibility in the rigid prescriptions, especially considering the restrictive canopy retention requirements. Although the focus of this scoping is on aspects of the T/I rules excluding riparian function, the Class I watercourse canopy retention requirements are the most operationally limiting and ecologically unwarranted of any of these regulations and therefore deserve mention here.

L 4-4
G-4 L06 OPS

The canopy retention requirements ignore site-specific sources of shade, including steep topography relative to sun angle and understory canopy over the ground. The CDF enforcement protocol for this rule focuses on overhead canopy measurements instead of Angular Canopy Density (ACD) or Solar Pathfinder (weighted ACD) measurements. In situations where any natural openings exist along the riparian corridor, the excessive overstory canopy retention requirements often force the RPF to forego thinning of dense

L 4-5
G-4 L06 OPS

redwood groves. This lack of ability to manage can lead to slowed growth, stagnation, and increasingly unhealthy conditions in the riparian corridor. Selective harvesting within the riparian corridor could otherwise be used to accelerate the growth of larger trees as a benefit to riparian habitat complexity. Developing a multi-layered unevenaged stand in the Class I WLPZ, which in turn would provide better wildlife habitat and habitat connectivity, would be highly preferable to the severely limiting standard rule. In the Southern Subdistrict, stream temperature is not commonly a limiting factor for anadromous salmonids and the forests have been gradually closing in since the broad-scale clearcuts more than 100 years ago. Furthermore, creating opportunities for light to reach even small portions of the stream bank and channel would increase stimulus for biological activity (e.g. macroinvertebrates). Greater flexibility in canopy retention requirements for plans proposing single-tree selection silviculture would more appropriately meet the goals expressed in 14 CCR 916.9(a).

L 4-6
6-4 606 OPS
6-7 INTENT

The rules allow for harvesting of hardwoods for the purpose of enabling conifer regeneration per 14 CCR 916.9(g); however, there is seldom an instance when a hardwood may be felled due to the stringent overstory canopy retention requirements. Therefore, under these rules, any operations in the WLPZ are unlikely to result in successful regeneration.

L 4-7
6-4 606 OPS

The organization of the T/I rules leaves much to be desired. Rules pertaining to cumulative effects analyses, road and landing practices, winter period operations, etc. are lumped into this one section. I understand that the road-related portions of these rules may soon be assembled into a separate Road Rules section. The rest of the T/I rules could benefit from a similar overhaul.

L 4-8
6-4 606 OPS

The February 13 scoping letter raises the issue of monitoring and adaptive management. Although the Board of Forestry has pledged to develop and implement a program per 14 CCR 916.11, it is hard to know what it will entail. The Southern Subdistrict already has the most comprehensive and expensive water quality monitoring protocol anywhere in the state, administered by the Central Coast Regional Water Quality Control Board (CCR WQCB). Under the permit, forestland owners must conduct temperature, turbidity, photo-point, visual, and forensic monitoring and reporting for at least 5 years following completion of a timber harvest. The adoption of another arduous monitoring protocol must be avoided. I urge the Board to do everything it can to alleviate redundancy in development of future monitoring schemes. This should include an analysis of the existing CCR WQCB monitoring protocol to determine if this monitoring regime already achieves your Board's objectives.

L 4-9
6-2 INTENT

Finally, although it does not impact standard timber harvest plans, 14 CCR 916.9(s) prohibits all operations in a WLPZ, ELZ, or EEZ under emergency or exemption notices. This presents a problem for landowners wishing to remove a tree in proximity to a watercourse under a local permit or fire safe exemption. Although probably intended to prevent excessive tree removal next to high order watercourses, this regulation creates a regulatory roadblock for many benign and frequently necessary tree removals next to low-order watercourses.

L 4-10
6-5 INTENT

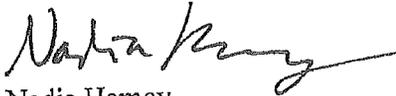
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6-4 606 OPS

Replacing professional judgment and experience with rigid prescriptions frequently results in inferior management. The Board of Forestry should proceed with its long-stated objective of creating performance-based standards, which can only serve to benefit forestlands and fish throughout the state.

L 4-12
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INTENT

Thank you for the opportunity to comment on the implications of management according to the T/I rules in the Southern Subdistrict. Please do not hesitate to contact me if you have further questions at (831) 457-6383 or nadiah@big-creek.com.

Sincerely,

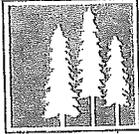


Nadia Hamey
RPF #2788

CC:
Chris Zimny, BOF Regulations Coordinator
chris.zimny@fire.ca.gov

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California Forestry Association
1215 K Street, Suite 1830
Sacramento, CA 95814
(916) 444-6592 fax (916) 444-0170
www.foresthealth.org cfa@foresthealth.org

February 27, 2008

George Gentry
Executive Office
California Board of Forestry
george.gentry@fire.ca.gov

Re: Evaluation of Forest Practice Rules for Threatened or Impaired Watersheds (T/I Rules)

Dear Mr. Gentry,

On behalf of the California Forestry Association, I submit the following general recommendations for the Board of Forestry's (Board) review of the non-riparian aspects of the T/I Rules. To assist you and the Board in the review process, I am forwarding two documents: *FPRs for Watersheds with Threatened or Impaired Values (T/I) and Related Rules* (spreadsheet); and *Expanded Matrix of Salmonid Protection Measures* (matrix).

The spreadsheet includes a complete list of the T/I Rules. Those currently undergoing a science literature review are highlighted in blue. Some of the un-highlighted have specific recommendations. The matrix provides a four-state comparison of watercourse and lake protection rules prepared for CFA by CH2Mhill.

As you know, the T/I Rules were adopted in 1999 for implementation in 2000 on an interim basis only. Because the rules were adopted to provide protection measures on a short-term basis only, they were crafted as one-size-fits-all and were based on a questionable interpretation of a Scientific Review Panel report. Based on those facts and the current science literature review, CFA makes the following recommendations.

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- (1) Review the T/I Rules in their entirety.

As demonstrated from the spreadsheet, few rules remain outside of the science literature review. When you weigh the additional resources it will take for the Board and staff to review these rules against the regulatory burden imposed on landowners for the past eight years, the scale tips sharply in favor of full review.

- (2) Review the complete rulemaking record (Record) for evidence that all requirements of the Administrative Procedures Act were sufficiently met by today's standard.

As mentioned above, the basis for these rules was a questionable interpretation of a Science Review Panel. The Record should contain that report and evidence either supporting or objecting to reliance on the report. Taking the historical information into consideration, along with the current state of the science, and additional regulatory measures adopted since 1999, provides the Board an excellent basis for decision making.

- (3) Acknowledge that the burden to adopt any/all of the T/I Rules lies with Board based Article 4 of the Forest Practice Act (FPA).

In particular, section 4552 requires "the rules and regulations adopted by the board shall be based upon a study of the factors that significantly affect the present and future condition of timberlands . . ." It is CFA's understanding that the Board has placed the burden on persons opposing a rule to prove it should be amended or repealed. Based on the facts and the FPA, I believe this burden shift is inappropriate.

If a proper basis cannot be articulated for the permanent adoption of a rule, that rule should be allowed to sunset.

CFA staff and members appreciate your willingness to take on this task and look forward to working with the Board to resolve these complex issues. If you have any questions please feel free to contact me.

Sincerely,



Michele Dias
VP, Legal and Environmental Affairs

Enclosure

000032

916	Intent of Watercourse and Lake Protection		Phrase "potentially significant adverse . . ." is inconsistent with definition on page 16 of rulebook. Amend. Phrase "providing equal consideration" is inconsistent with legislative intent provided in FPA section 4511 and 4512. Language should be amended to read "giving consideration to . . ."
916.2	Protection of Beneficial Uses of Water and Riparian Functions		Requirement "restored to good condition, where needed" goes beyond CEQA mitigation requirements. Delete.
916.9	Additional protection measures in any planning watershed with T/I except in watershed with coho salmon		
916.9 (a)	Goal of T/I Rules		
916.9 (b)	Acknowledge or refute pre-plan adverse effects		
916.9 (c)	Class I and II buffer widths and harvest restrictions		
916.9 (d)	Plan description for reporting mitigation measures		
916.9(e)	Channel zone requirements		
916.9(f)	Minimum WLPZ width for Class I		Requires DFG concurrence. Delete as it provides defacto veto for DFG.
916.9(g)	Minimum WLPZ canopy for Class I		Requires DFG concurrence. Delete as it provides defacto veto for DFG and justify canopy requirement.
916.9(h)	Class I crossing requirements		
916.9(i)	Recruitment of LWD in Class I		
916.9(j)	Special management zones for inner gorges		
916.9(k)	Winter period operations		
916.9(l)	Winter period restrictions for road construction, reconstruction		
916.9(m)	Tractor roads		
916.9(n)	Operation season limits within WLPZ, ELZ or EEZ		
916.9(o)	Active erosion sites in logging areas		
916.9(p)	Erosion control maintenance period		
916.9(q)	Broadcast burning		
916.9(r)	Water drafting		
916.9(s)	Exemption notice limitations		
916.9(t)	Emergency notice limitations		
916.9(u)	Salvage logging limitations		
916.9(v)	Nonstandard practices		
916.9(w)	Alternative practices		
916.9(x)	Other measures		
916.9(y)	ITP, HCP exception		
916.9(z)	Sunset provision: December 31, 2008		
916.11	BOF to develop and implement a monitoring program		
FPR Code Section	Road Measures		Comments/Proposed Modifications

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923.3	Watercourse Crossings [All Districts]	Exemption provided thru 1601 and 1603 of Fish and Game Code. Is this section duplicative of those codes and therefore unnecessary? If so, repeal.
923.4	Road Maintenance [All Districts]	
923.9	Roads and Landings in Watersheds with T/V Values [All Districts]	Except in "watersheds with coho salmon." Regulations apply to both riparian areas and upland areas.
923.9(a)	Logging road or reroading construction or reconstruction requirements	
923.9(b)	New and reconstructed logging road restrictions	
923.9(c)	Requirements for slopes greater than 50%	
923.9(d)	Requirements for logging roads with a grade of 15% or greater 500'	
923.9(e)	Requirements for drainage and erosion control features	
923.9(f)	ITP and HCP exemption	
923.9(g)	Sunset provision: December 31, 2008	



February 27, 2008

George Gentry
Executive Officer
California Board of Forestry
george.gentry@fire.ca.gov

Re: Initial Scoping Comments on Aspects of the Forest Practice Rules for Threatened or Impaired Watersheds (T or I Rules) Which are Primarily Not Related to Riparian Function.

Dear Mr. Gentry,

Campbell Timberland Management submits the following initial comments for consideration by the Board of Forestry and/or Forest Practice Committee in their evaluation of the T or I rules that are not related to riparian function. However, there is some overlap and thus discussion with respect to how specific definitions related to beneficial functions of the riparian zone and related undefined values are linked to general policy considerations contained in both 14CCR916 and 14CCR 916.2. We strongly urge the Board/Committee to consider the interrelationship and policy issues contained in these sections and 14CCR895.1 before delving into the more specific rule requirements. Suggested revised rule language is underlined.

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61 INTENT

Beneficial Functions of the Riparian Zone The definition should simply state what the beneficial functions are and not include the level of consideration that should be afforded them. Therefore delete the phrase "to provide protection for". Avoid revising until the TAC and scientific literature can weigh in.

6-2
61 INTENT
DEF

Channel zone Revise to simply state "means that area located between the watercourse or lake transition lines." The reference to bankfull stage and floodplains is unnecessary and only leads to confusion and argument.

6-3
61 - DEFINITION?

Saturated Soil Conditions Revise the definition to eliminate incorporating rule standards in the definition. Linkage between the definition and rule requirements regarding water quality protection during operations would be contained in each applicable rule. Saturated Soil Conditions "means that site conditions that are so wet that soil aggregates break down and the surface layer of soil becomes a slurry (may include the pumping of fines from poorly or inadequately rocked roads) as a result of ground-based yarding/loading, site preparation, hauling or road maintenance activities. Such conditions are often evidenced by reduced traction by equipment as indicated by spinning or churning of wheels or tracks or inadequate traction without blading wet soil or material. Soil surfaces that are hard frozen throughout the period of heavy equipment use are excluded from this definition." Existing rule 14CCR923.6 addresses road and landing use under hard frozen conditions.

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61 - DEF.

Stable Operating Surface Revise the definition to eliminate incorporating rule standards in the definition. Linkage between the definition and rule requirements regarding water quality protection during operations would be contained in each applicable rule. Stable operating surface means "a road or landing surface with a structurally sound road base appropriate for the type, intensity and timing of intended use."

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DEF

Section 14CCR916 – Intent of Watercourse and Lake Protection

Although the first paragraph of this Section may accurately track CEQA language, instead revise as follows: "...protected from significant adverse impacts on the environment associated with timber operations that may be site-specific or cumulative." The term significant adverse impact on the environment is defined in 14CCR895.1. The phrase "native aquatic and riparian species" is not defined in 14CCR895.1 and thus it is unclear as to the extent and effect of the rule requirements that follow.

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The second paragraph of this Section requires the use of feasible measures. Subsection (a) establishes the standards of "maintained where they are in good condition, protected where they are threatened and insofar as feasible, restored where they are impaired". This may not be consistent with requirement that requires feasible measures. It is not clear what standards are applicable for the terms "threatened" and "impaired"? These were adopted as part of the original T or I rule package but are applied more generally. Should there be clarification that this is simply a dictionary definition and does not connote broader policy references to CESA or U. S. EPA legal requirements or regulations?

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Subsection (b)(1) relates to protection and quality of beneficial uses of water set forth in water quality control plans adopted by the State Water Resources Control Board. Subsection (b)(1) establishes a "prohibition" from discharge in deleterious quantities not only to fish, wildlife or the quality and beneficial uses of water but also to "the beneficial functions of riparian zones" (see 895.1 definition). This expands upon and is inconsistent with the established statewide FPR "prohibition" specified under 14CCR 916.3. The deleterious quantities approach has been taken from the adopted Water Quality Control Plan for the North Coast Region (Action Plan For Logging, Construction and Associated Activities, 4-28.00). Other Regional Water Boards may use different standards that may be appropriate.

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Similarly subsection (b)(2) expands the deleterious quantities approach to the removal of water, trees or large woody debris from the watercourse (channel) and the adjacent riparian zone and flood plain. There needs to be some common understanding and "agreement" between Agencies (Resources and Cal EPA) and Boards with respect to these policy and legal considerations.

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Subsection (c) specifies that there shall be equal consideration as a management objective with respect to protecting and restoring "native aquatic and riparian-associated species" (different from similar term used earlier in 14CCR916; this term is not defined in 14CCR895.1) and the "beneficial functions of riparian zones" within any prescribed WLPZ or ELZ or EEZ designated for watercourse or lake protection. This expands upon the equal consideration standard specified earlier in 14CCR916 (paragraph two) that is limited to the beneficial uses of water.

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Subsection (d) articulates how the above measures are to be utilized by timberland owners in meeting their specified legal responsibilities to protect public trust resources. The issue is whether the above requirements expand the requirements beyond what is legally required.

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6-1 INTENT

14CCR916.2 – Protection of the Beneficial Uses of Water and Riparian Functions

Subsection (a) specifies that protection measures shall be determined by the presence and condition of specified values. Use of the term “logging area” potentially expands protection measures to appurtenant roads and areas within 100 feet of such roads. Many of the potential measures are then made effective through 14CCR919.9(o). Is this the standard utilized for all other requirements of the rules? Would it be more clear and consistent to use the phrase “during the conduct of timber operations” instead? The second to the last sentence in this subsection should be revised to be consistent with earlier proposed changes and to read as follows: “The values shall be protected from significant adverse impacts to the environment associated with timber operations through a combination of the rules and plan-specific mitigation.”

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6-2 GEO
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6-1 INTENT

Subsection (a)(1): Does the phrase “quality and beneficial uses of water” imply both existing and restorable uses or are these additions. Only existing and potential beneficial uses are listed in the Water Quality Control Plans. The use of the term restorable appears to expand the criteria and is not consistent.

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6-1 INTENT

Subsection (a)(3) specifies that protection riparian habitat (undefined term, how far from the wetted channel does this extend?)

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6-1 INTENT
6-2 DEF
6-4 LOG OPS

Subsection (b) specifies that the specified rules are the minimum protection measures. Replace the word minimum with the word standard (in two places). This more appropriate because the protection measures can be increased or decreased as provided for in the rules. Use of the word minimum may also be construed as to imply that the rules cannot be reduced and only increased.

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6-1 INTENT

14CCR916.9 – Protection and Restoration in Watershed with T or I Values

Subsection (c): Separate the second paragraph into its own subsection. Modify to clarify that the special operating zone as specified applies only to evenage regeneration methods and rehabilitation adjacent to Class I WLPZs as follows: “...are adjacent to a Class I WLPZ, ...”. This was the intent when the T or I rules were adopted and sometimes causes argument over whether it applies adjacent to Class II WLPZs as well.

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6-4 LOG OPS

Subsection (k)(3): Add the rule requirement (linkage) regarding water quality protection at the end of this subsection to aid in defining what a stable operating surface should not result in. Consider the following: “... stable operating surface where soil erosion and sediment transport is minimized and the discharge of sediment into watercourses and lakes in quantities deleterious to the beneficial uses of water is prevented and does not violate applicable water quality requirements.”

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6-4 LOG OPS

Subsection (l): Separate the second and third sentences of the rule into their own subsection. The first sentence addresses road construction/reconstruction while the other two sentences address road use. This is how the rule is being interpreted and used but the change will improve clarity. Consider modifying the second sentence of the rule to change the standard triggering cessation of use as follows: "operating surface does not exist, or when soil erosion and sediment transport is not minimized and the discharge of sediment into watercourses and lakes in quantities deleterious to the beneficial uses of water is not prevented or violates applicable water quality requirements."

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Subsection (n): Modify the dates in this subsection so that they are consistent with other rule requirements. The dates under (1)(B) and (C) would be changed from May 1 through October 15 to May 1 to October 15; October 16 through April 30 to October 15 to May 1. Under (n)(3) modify the stabilization coverage of where slash is used to 75% from 90% under the specified practice follows: "Where slash mulch is used, the minimum coverage slash coverage shall be 90%, or 75% where the slash is packed into the ground surface through use of a tractor or equivalent piece of heavy equipment."

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6-4
L06 OPS

Subsection (o): Revise to improve clarity concerning which subset of the active erosion sites identified shall be treated. "As part of the plan the RPF shall: 1) Identify active erosion sites associated with logging roads and landing in the logging area, 2) Assess such sites to determine which ones pose significant risks to the beneficial uses of water, 3) Assess those sites, which pose significant risks to the beneficial uses of water, to determine whether feasible remedies exist, and 4) For sites pose that significant risks to the beneficial uses of water and where feasible remedies exist, propose appropriate treatment."

6-20
6-4
L06 OPS

Subsection (r): The requirement for a water drafting plan when certain specific conditions are not met (e.g. bypass flows below 2 cubic feet per second, more than 10% pool volume, divert more than 10% surface flow) currently pertains to all Classes of waters. For smaller landowners the preparation cost associated with a water drafting plan may be daunting, and would in turn drive landowners to large Class I watercourses where a water drafting plan would not be necessary. For the Coast Region it would be of benefit if the water drafting plan requirements were only keyed to Class I waters. In effect, a drafting plan is required by default on any of our Class IIs, springs, & wet areas where none of the three conditions listed above are met. We suggest eliminating the requirement for a water drafting in the Coast Forest District on non-Class I waters by providing a different set of metrics to lower class watercourses, that would facilitate drafting from these areas, lessening the burden placed on Class I fish-bearing watercourses. Realize that landowners will still be required, in most cases, to obtain DFG 1611 agreement with CEQA review through the THP process.

6-21
6-4
L06 OPS

14 CCR 923.9 - Roads and Landings in Watersheds with T or I values

Subsection (c): Modify the lead-in phrase to require linkage between the specified practices and proximity to watercourses as follows: "The following shall apply on slopes greater than 50% that have access to a watercourse or lake unless the RPF in the plan describes how slope depressions, drainage ways or other natural retention and detention features are sufficient to control overland transport of eroded material: ...". There may be situations where roads are proposed to cross steep slopes for short distances and potential access to a watercourse is mitigated by a wide bench acting as retention feature to store excess construction materials should failure occur.

6-22
6-4
R0105

Subsection (e): Modify as follows: "Where logging road networks are remote or are located where the landscape is unstable, where crossing fills over culverts are large, or where drainage structures and erosion control features historically have a high failure rate, drainage structures and erosion control features shall be oversized, designed for low maintenance, reinforced, or removed prior to the completion of timber operations." This makes it very clear that where such conditions exist one of the four optional treatment approaches shall be followed. The method of analysis and design for crossing inspection can be required on a site-specific basis per the THP review and approval process instead of required at the time of plan submission for all such sites.

J
6-23
6-4
20105

Thank you for the opportunity to provide initial comments on the "T or I rules".

Sincerely,



Peter F. Ribar
Resource Manager

Zimny, Chris

From: Gentry, George
Sent: Wednesday, February 27, 2008 4:11 PM
To: Zimny, Chris
Subject: FW: T or I rules review comments

George (YG) Gentry
Executive Officer
Board of Forestry and Fire Protection
Office: 916-653-8007 Cell: 916-616-8605

-----Original Message-----

From: Glenda Marsh [mailto:GDMARSH@dfg.ca.gov]
Sent: Wednesday, February 27, 2008 4:09 PM
To: Gentry, George
Cc: Curt Babcock; Daniel Applebee; Julie Vance; Kenneth Moore; Kevin Shaffer; Mark Moore; Mark Stopher; Richard Fitzgerald; Scott Flint; Tina Bartlett
Subject: T or I rules review comments

RE: comments from Timber Harvest Review staff at the Department of Fish and Game regarding review of the interim Threatened or Impaired watersheds rules.

DFG Timber Harvest review staff provided a list of items in the interim T or I rules that we believe require review and possible revision. Staff noted that many of these items require more detailed commentary, but the short time frame for accepting comments, two weeks, prevented that. We hope this list is useful for the Board's consideration at this time. We look forward to providing more detailed commentary as the Board of Forestry proceeds to review the rules.

7-1 Group 3 cum. v. h.
7-2 Group 4 2008

1. Need for additional development of guidance for cumulative impact assessment and mitigation.
2. Improvements to manage delivery of road generated sediment to aquatic habitat.
3. Cumulative sediment effects associated with roads.
4. Cumulative sediment effects as related to rate of harvest, reflected in a disturbance index (all related to watershed resiliency to stressing storms).
5. The rules should clearly state that small contributions of plans to pre-project cumulatively considerable adverse conditions must be avoided, minimized, and/or mitigated. This point is a frequent issue of field discussion and it would be nice to put it to bed.
6. Problems regarding the quality of field assessment per 916.9(r)(2). The rules related to water drafting should:
 - a) require the preparation of water drafting plans for all drafting activity (not just those where the RPF has estimated that)
 - b) require water drafting plans to demonstrate that drafting shall be conducted in manner that provides sufficient bypass flows to keep fish in good condition.
7. Reductions in WLPZ area due to in-lieu practices shall be compensated for by adjustments to the WLPZ such that the area of the WLPZ is not reduced overall.
8. Consider whether expansion of WLPZ distances or increases in canopy retention are necessary to maintain suitable microclimatic conditions in streamside zones.
9. Consider additional rules to better meet ensure the protection of biological habitat conditions described in Technical Addendum 2 item (C)(4), such as snags, large woody debris, multistory, late seral.
10. Consider rules to ensure recruitment of large woody debris in class II WLPZ.
11. Canopy retention itself does not always result in retention or recruitment of late and diverse seral stage habitat components for wildlife. Consider additional rules to better meet the intent of 897(b)(1)(C) to achieve this. We need tools to ensure the retention of large old trees through senescence and mortality. Section 916.9(i) is the best rule we have for this purpose.

7-3 Group 3 cum.
7-4 Group 3 cum.
7-5 Group 3 cum. Group 1 intent.
7-6 Group 4
7-7 Group 4
7-8 Group 4
7-9 Group 4
7-10 Group 4
7-11 Group 4

Please let me know if you have any questions about the ideas presented here or need any further clarification.

lenda Marsh
rogram Coordinator
timberland Conservation Program
California Department of Fish and Game
1416 9th Street
Sacramento, CA 95814
(916) 651-8764
gdmars@dfg.ca.gov

Richard Gienger
Box 283, Whitethorn
<rgrocks@humboldt.net>
California 95589
707-923-2931
27 February 2008

Board of Forestry
Executive Officer George Gentry
1416 Ninth Street
Sacramento
California

Dear Mr. Gentry:

The following are some brief scoping comments on the Threatened or Impaired Rules -- those generally not directly related to riparian functions, although there is often an unavoidable 'process' connection -- e.g.: The Effectiveness and Implementation Monitoring provided for in 14 CCR Section 916.11 (936.11, 956.11). I may have additional comments prior to the March Board of Forestry meeting. These comments are personal and are also done on behalf of the Environmental Protection Information Center (EPIC) and the Humboldt Watershed Council (HWC).

The issue(s) around compliance with TMDLs (see Section 916.9(a)(1) and Section 916.12) should be examined. Are the specific goals of particular TMDLs being complied with, and if so, how? This, like most of my other concerns, requires presentation of actual examples of attempted T or I rule compliance in order to judge the effects and degree of implementation and what changes may be necessary for legal compliance and operational effectiveness.

B-1
GROUP 1
INTENT

Other issues that need to be examined is the implementation and effectiveness of measures relating to peak flows and flood frequency (Section 916.9(a)(7)); "Pre-plan cumulative effects on the population and habitat of anadromous salmonids" (Section 916.9(b)) -- note the connection to regular requirements in Section 916.4, including notably Section 916.4(a)(2-6); and WQ WDR & Waivers in relation to various T or I requirements e.g. winter ops (Section 916.9(k-l) and erosion issues (916.9(o-q)).

B-2
GROUP 3
CUMULATIVE

[There needs to be an examination of the use of alternatives and other measures (Section 916.9(u-w)). Careful attention and response to the reality and needs of Section 916.11, referenced above, is critical. There is doubt that Section 916.12 has been complied with, for instance, the reporting required under Section 916.12(b). There continues to be an issue about whether DF&G's 1601/1603 requirements are being timely incorporated into THPs (Section 923.3). Some examples of the range of compliance with Section 923.9 is also important for the scoping of, and response to, T or I Rules in order to make appropriate improvements.]

B-4
GROUP 5
MONITORING

B-5
GROUP 8
MONITORING

B-3
GROUP 3
MONITORING

B-6
GROUP 6
MONITORING

B-7
GROUP 4
ROADS
GROUP 3 MONITORING

Sincerely,

Richard Gienger

000044

L-9

ly, Chris

From: Dustin Lindler [dustin@gotsky.com]
 Sent: Wednesday, February 27, 2008 9:50 AM
 To: 'Dan Fisher'
 Cc: Gentry, George; Zimny, Chris
 Subject: RE: T/I Scoping Comments

I have a few comments. Pertinent code section is in bold, my comments follow in the bullet points below each cited section -

Code Section - 936.9(e)(1)(E) "Class III watercourses where exclusion of timber operations is not needed for protection of listed salmonids."

L-1 Group 4 Log ops

- This rule is misinterpreted by many agencies to mean that there can be no channel zone harvesting within class IIIs or that the RPF has to go through additional measures to explain why channel zone harvest in these IIIs will not impact fish.
- My take on this is that the rule gives the RPF an expressed exception to allow harvest of class III channel zone trees, within the rule of reason, without further detail provided in the THP.
- This rule could be improved through the following language - *"In class III watercourses. Such harvest is allowed unless additional measures are necessary to protect listed salmonids."*

Code Section - 936.39(h)(2) "A description of all existing permanent crossings of Class I waters by logging roads and clear specification regarding how these crossings are to be modified, used, and treated to minimize risks, giving special attention to fish to pass both upstream and downstream during all life stages." **Code Section - 943.3(c)** "Drainage structures at watercourses that support fish shall allow for unrestricted passage of all life stages of fish that may be present, and shall be fully described in the plan in sufficient clarity and detail to allow evaluation by the review team and the public, provide direction to the LTO for implementation, and provide enforceable standards for the inspector."

L-2 Group 4 Road / Motor Crossing

- These rules are poorly written and cause undue debate during the review process. These rules have been cited when recommending removal of culverts that prevent fish passage. Neither of these rules clearly state that this needs to be done.
- Somewhere between these two rules the following should be clearly stated, if this is the intent of these code sections, *"Where existing culverts prevent passage of all life stages of fish they shall be modified to allow said passage of fish, or the culvert shall be removed."*
- As a side note, as commonly practiced, reviewing agencies cite these rules and require culvert removal. Cal DFG then requires a 1611 permit fee from the landowner for a project that has been required by the state. This appears to be extortive. CALFIRE, as the lead agency should remedy this situation.

Code Section - 939.9 (k) "From October 15 to May 1, the following shall apply....."

L-3 Group 4 Log ops

- The "T&I" winter operating dates should be removed from the FPR. Dates on a calendar are meaningless. Operational limitations should be driven by ground conditions, not an arbitrary date.

Code Section - 936.9(l) "Construction or reconstruction of logging roads, tractor roads, or landings shall not take place during the winter period unless the approved plan incorporates a complete winter period operating plan"

L-4 Group 4 Log ops

- This rule should be cleaned up. 936.9(k) already requires a complete winter operating plan for ops after Oct 15. Construction / reconstruction is considered timber operations, so much of this language is redundant and confusing.

Code Section - 936.9(n)(3) ".....Where straw, mulch, or slash is used, the minimum coverage shall be 90%, and any treated area that has been subject to reuse or has less than 90% surface cover shall be treated again prior to the end of timber operations....."

The following should be added to this section, "depth shall be sufficient to protect against significant discharge." Or something to that effect.

L-5 Group 4 Log ops

000045

Dixon Letter

It is common for reviewing agencies to request a minimum depth of slash or mulch. In the case of slash, a minimum depth is meaningless as slash size is variable. In any event, a minimum depth is not required by the rules and additional language should be added to protect against underground regulation.

Code Section - 936.9(b) "Pre-plan adverse cumulative watershed effects on the populations and habitat of anadromous salmonids shall be considered. The plan shall specifically acknowledge or refute that such effects exist. Where appropriate, the plan shall set forth measures to effectively reduce such effects."

- L 9-6 Group Intent Group 3 Cuml Impact*
- This language is meaningless and could result in disclosure issues on part of plan preparing RPFs.
 - If a plan is located within a T&I watershed, it could be pretty much assumed that adverse effects exist.
 - In terms of "setting forth measures to effectively reduce such effects" reasons for declining numbers of anadromous fish are many and complex. Based upon the way this rule is written it appears that the assumption has been made that timber operations are a key and significant cause of impact to anadromous fisheries. I do not feel that this is the case. For example, if the underlying reason for reduced fish numbers is total blockage of spawning ground through dam installation, how are timber operations going to offset this impact?
 - This section should be removed in its entirety.

Code Section - 936.9(c) "Any timber operation or silvicultural prescription within 150 feet of any Class I watercourse or lake transition line or 100 feet of any Class II watercourse or lake transition line shall have protection, maintenance, or restoration of the beneficial uses of water or the populations and habitat of anadromous salmonids or listed aquatic or riparian-associated species as significant objectives."

- L 9-7 Group Intent Group 4 L 6 of 5*
- Section is meaningless and should be removed in its entirety
 - What is the definition of a "significant objective?" Code section has been cited by review-persons to basically mean that values associated with anadromous fisheries override the benefits of timber harvest. If this is the intent of this code section, it should be so stated in plain language.
 - Difficult to prove that intent of this section is being met and causes unnecessary debate. For example, how does one prove that a complete no-cut 150' buffer is not required to restore beneficial uses of water (just one example)?

Code Section - 936.9(u) - "No salvage logging is allowed in a WLPZ without an approved HCP, a PTEIR, an SYP, or an approved plan that contains a section that sets forth objectives, goals, and measurable results for streamside salvage operations."

- L 9-8 Group 4 L 6 of 6 of 5*
- This may border on comment regarding riparian function, but this code section should be removed in its entirety.
 - Salvage logging assumes that the tree will die basically within one year. Dead trees provide no canopy, therefore, dead trees cannot effectively shade a watercourse protecting against thermal impacts.
 - Recruitment of LWD is already detailed under 936.9(i) which provides minimum recruitment amounts. As such, salvage logging cannot significantly impact recruitment of LWD.
 - Effectively, all this code section does is prevent responsible forest management in the WLPZ.

Thank you for your time and consideration.

Dustin Lindler
CEO, Jefferson Resource Company
RPF #2701

From: Dan Fisher [mailto:Dan.Fisher@fruitgrowers.com]
Sent: Wednesday, February 20, 2008 9:53 AM
To: Terry Salvestro; Tom Young; Doug Staley; Dustin Lindler
Subject: FW: T/I Scoping Comments
Importance: High

If you haven't responded, you have an extra week. Please take the time.
DAN

From: Michele Dias [mailto:micheled@cwo.com]
Sent: Tuesday, February 19, 2008 11:50 AM

000046

2/27/2008

Zimny, Chris

From: Gentry, George
Sent: Wednesday, February 27, 2008 3:56 PM
To: Zimny, Chris
Subject: FW: Literature review of impacts of vegetation management to riparian areas

George (YG) Gentry
Executive Officer
Board of Forestry and Fire Protection
Office: 916-653-8007 Cell: 916-616-8605

-----Original Message-----

From: Jonathan W Long [mailto:jwlong@fs.fed.us]
Sent: Wednesday, February 27, 2008 2:04 PM
To: Gentry, George
Subject: Literature review of impacts of vegetation management to riparian areas

Dear George,

Zach Hymanson forwarded a notice that the California Board of Forestry is embarking upon a literature review of impacts of vegetation management to riparian areas. The Pacific Southwest Research Station is currently working on a literature review of impacts of fuel treatments, and impacts to stream environment zones is one of the topics of special interest. I am wondering who will be heading up your project, and whether we might share notes and ideas. We have created an on-line bibliography available through IIMS (Tahoe Integrated Information Management System) that includes references that we have compiled. Collaboration on this project could yield a more thorough product for all our audiences. We are anticipating that our synthesis papers will be available for review in April.

Sincerely,

Jonathan W. Long
Pacific Southwest Research Station
Tahoe Environmental Research Center
291 Country Club Drive
Incline Village, NV 89451
(775) 881-7560 x. 7482

L 11

ROSEBURG

February 27, 2008

Mr. Stan Dixon, Chairman
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Scoping Comments for T/I Rules

Dear Stan:

I am pleased that the board is taking a proactive stance with regards to this regulatory package which has been "interim" for the past 6 years. Please consider the following suggestions as you craft revisions to these regulations.

TAC: The decision to assemble a Technical Advisory Committee was a good move and I hope you will carefully implement the scientific direction that they will provide. Any regulation should be based on sound science but ultimately the board will have to determine exactly what "sound" means. I hope you will use the same rigor that they are employing.

L 11-1
INTENT
GROUP 1

"Measurable" 14-CCR 936.9(a): Due to our ability to measure things that may have no material effect on the resource at risk, I recommend that you base the "GOALS" on achieving conditions directly affected by the forest policy or regulation.

Additional Zone for Evenaged Management 14-CCR 936.9(c) & (i): Restrictions should be included only if a lack of LWD can be shown to be a limiting factor for the stream in question.

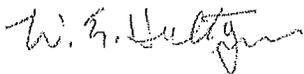
Canopy Requirements 14-CCR 936.9(g): Canopy requirements should be the same as shown in the table for 14-CCR 936.5 unless temperature can be shown to be a limiting factor for the stream in question.

L 11-2
GROUP 4
LOG CAS

L 11-3
GROUP 4
LOG CAS

It is hoped the Board will pay strict attention to the requirements for necessity, clarity and non-duplication as required by the APA. Best of luck on this ambitious effort.

Best Regards,



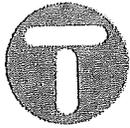
Arne Hultgren, RPF #2581
Manager - California Land & Timber

98 Mill Street, Weed, CA 96094

530.938.5488

000049

L 12



Timber Products Company

THE TREMENDOUS RESOURCE

P. O. Box 766
Yreka, CA 96097
Phone (530) 842-2310
Fax (530) 842-3825

February 27, 2008

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

RE: Scoping comments for T/I Rules

Dear Members of the Board,

Timber Products Company (TPC) submits the following comments for consideration by the Board of Forestry and Fire Protection (BOF) in regard to the letter from the BOF dated February 13, 2008.

14 CCR 895.1-Definitions

Watersheds with threatened or impaired values: this term needs to be changed since it falsely implies that any watershed with listed salmonids is automatically threatened or impaired when, in reality, this is not the case. One idea to consider would be the term "Watersheds with listed anadromous salmonids".

Road decommissioning: this definition was added as part of the Coho Salmon Incidental Take Assistance rule package passed by the BOF in 2007. Please consider adding the phrase "to the extent feasible" after the word "prism" in the definition.

L12-1

GROUP 1
DEFINITIONS

14 CCR 898

TPC has no specific comments on this portion of the T/I Rules at this time.

14 CCR 898.2

TPC has no specific comments on this portion of the T/I Rules at this time.

14 CCR 914.8 [934.8, 954.8]

Subsections (c) and (g) were amended as part of the T/I Rules. TPC strongly supports the concept of providing fish passage for anadromous fish. However, this rule should be amended to eliminate the fish passage requirements at crossing locations where upstream movement is not possible in the natural channel. Fish passage should also be limited to crossings on watercourses with listed fish. For example, high mountain lakes are often stocked with fish species and those fish are able to move downstream through steep watercourse gradients but not back upstream. In that case,

L12-2

GROUP 4
CROSSINGS

a crossing installed on such a watercourse should not have to provide fish passage upstream since it is not possible in the natural channel.

14 CCR 916 [936,956]

TPC has no specific comments on this portion of the T/I Rules at this time.

14 CCR 916.2 [936.2, 956.2]

Subsection (a): the first sentence of the last paragraph of subsection (a) is vague and open-ended in its use of the term "where needed". Alternatively the language of 14 CCR 916 [936, 956](a) could be used to form a basis for providing more clarity as to when the values need to be restored.

Subsection (a)(2): this language should be discussed by the BOF Forest Practice Committee (FPC) to determine the role CDF has in the process of determining restorability when the plan submitter and DFG have different views of restorability on a particular THP.

Subsection (b) uses the term "minimum" twice. The first use of the term should be deleted from the language since the classifications are used to determine the appropriate protection measures period, not just the minimums.

L 12-3
Group 1
INTENT

14 CCR 916.9 [936.9, 956.9]

Subsection (a)(1): the language seems to imply that for watersheds without an adopted TMDL, operations must be planned to not result in any measurable sediment load increase to a watercourse or lake. This standard is inappropriate since watersheds with adopted TMDLs, along with the associated sediment impairment determination, have allocated amounts of sediment (i.e. there is some allowance for sediment input to watercourses from management activities). Further discussion of this subsection by the BOF FPC is warranted.

Subsection (c): the appropriateness of the special operating zone (essentially a buffer on the initial buffer) should be examined with a discussion informed by the literature review being conducted by the TAC.

Subsection (d): this section requires the addition of text to harvest plans without directly providing any protection to listed anadromous salmonids. Therefore, its necessity should be discussed by the BOF FPC.

Subsection (f): the blanket 150-foot width should be examined with a discussion informed by the literature review being conducted by the TAC. In addition, the BOF should consider the appropriateness of having this (and other T/I protection measures) apply to all Class I watercourses. An alternative approach would be to have the T/I protection measures only apply to watercourses with listed anadromous salmonids with the standard rules being applied to the other Class I watercourses.

Subsection (g): the appropriateness of the canopy retention requirements should be examined with a discussion informed by the literature review being conducted by the TAC.

Subsection (h)(1): this section simply requires the addition of text to harvest plans without directly providing any protection to listed anadromous salmonids. Therefore, its necessity should be discussed by the BOF FPC.

Subsection (h)(2): with regard to fish passage, the comments provided above under the "14 CCR 914.8 [934.8, 954.8]" heading also apply to this section.

L 12-4
Group 1
INTENT

L 12-5
Group 4
Lob 20

12-6
Group 4
Lob 6

L 12-7
Group 4
Lob 20

12-8
Group 4
Lob 20

12-9
Lob 6
Ops
6 101

Subsection (i): the appropriateness of the large woody debris requirements should be examined with a discussion informed by the literature review being conducted by the TAC.

12-10
6200P4
Lob CPS

Subsection (k)(2): this language provides an unnecessary prescriptive limitation on operations and should be eliminated. The language is unnecessary since 14 CCR 916.9(l) prohibits such operations when saturated soil conditions exist. In addition, the language uses an undefined term (low antecedent soil wetness) and therefore is unclear.

12-11
6200P4
Lob CPS

Subsection (n)(2): this language should be in the roads section of the forest practice rules.

12-12
6200P4
ROAS

Subsection (n)(3)(C): the necessity to treat disturbed cutbanks and fills within the entire WLPZ should be examined by the BOF FPC.

Subsection (n)(3)(D): the language could be interpreted to require landowners to treat naturally disturbed areas within the WLPZ. Therefore, the language needs to be changed to provide more clarity by limiting treatment to man-made disturbances.

12-13
6200P4
Lob CPS

Subsection (r)(2)(D)4.: the necessity to require an operations log should be examined by the BOF FPC.

12-14
6200P4
Lob CPS

Subsection (s): the harvest of dead, dying, or diseased trees should be allowed under exemption notices in T/I watersheds under exemption notices. The BOF FPC should discuss the allowance of such harvests similar to the language in 14 CCR 916[936, 956].9 (t)(7).

12-15
6-4
Lob CPS

Subsection (v): the last half of this subsection brings in other forest practice rules such as 14 CCR 916 [936, 956].6(a)(1)(D)(cc) which requires an "equal or greater protection" standard to alternative protection measures. This is inconsistent with subsection (v) of 14 CCR 916[936, 956].9 which is appropriately focused achieving the goals of 916[936, 956].9(a). The BOF should consider amending 14 CCR 916 [936, 956].6(a)(1)(D)(cc) to make it consistent with 14 CCR 916[936, 956].9(v).

12-16
6-4
Lob CPS

Subsection (w): the first sentence of this language is very similar to 14 CCR 916[936, 956].9(v). In addition, this language is very similar to language in the overarching regulation 14 CCR 897(h). Therefore, the BOF should consider deleting this language from the T/I Rules since it is duplicative to existing regulation.

12-17
6-4
Lob CPS

14 CCR 916.11 [936.11, 956.11] Effectiveness and Implementation Monitoring
The BOF should consider the necessity of these regulations in light of the recent passage of 14 CCR 916.11.1[936.11.1].

12-18
6200P4
Monitor

14 CCR 916.12 [936.12, 956.12] Section 303(d) Listed Watersheds
TPC has no specific comments on this portion of the T/I Rules at this time.

14 CCR 923.3 [943.3, 963.3] Watercourse Crossings

Subsection (c): with regard to fish passage, the comments provided above under the "14 CCR 914.8 [934.8, 954.8]" heading also apply to this section.

Subsection (g): with regard to fish passage, the comments provided above under the "14 CCR 914.8 [934.8, 954.8]" heading also apply to this section. In addition, this language is largely duplicative to subsection (c).

12-19
6200P4
ROAS
12-20
6200P4
ROAS

14 CCR 923.9 [943.9, 963.9] Roads and Landings in Watersheds with Threatened or Impaired Values

Subsection (a): this section simply requires the addition of text to harvest plans without directly providing any protection to listed anadromous salmonids. Therefore, its necessity should be discussed by the BOF FPC.

Subsection (b): this section simply requires the addition of text to harvest plans without directly providing any protection to listed anadromous salmonids. Therefore, its necessity should be discussed by the BOF FPC.

Subsection (c)(1): this section simply requires the addition of text to harvest plans without directly providing any protection to listed anadromous salmonids. Therefore, its necessity should be discussed by the BOF FPC.

} 12-21
} 12-22
} 12-23

TPC appreciates the opportunity to provide comment on the T/I Rule Package and looks forward to working with the BOF in its review of the rule package. We hope our comments are helpful in this effort.

ALL
Group 4
ROADS

Sincerely,

Chris Quirnbach
Forester
RPF #2623

L13



United States Department of the Interior
California Department of Parks and Recreation
Redwood National and State Parks
121200 Hwy 101, P.O. Box 7
Orick, California 95555



Y34

February 27, 2008

Stan L. Dixon, Board Chairperson
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA. 94244-2460

Dear Mr. Dixon:

The following are Redwood National and State Parks' comments for the public and agency scoping of the Threatened or Impaired Watershed (T/I) rules. We are grateful to the Board of Forestry for their continued efforts to increase the protection of water quality and its beneficial uses. The following comments focus specifically on the prevention of stream diversions and are based on decades of professional experience within the disciplines of geology, hydrology and geomorphology in Northern California, and review of timber harvest plans in the Redwood Creek watershed, Humboldt County.

The T/I rules should place a greater emphasis on preventing stream diversions at existing and newly constructed watercourse crossings by describing how diversions should be prevented. We strongly believe that well-constructed rolling dips ("Critical Dips") or grade breaks should be integral to all newly constructed or reconstructed crossings, and at existing crossings in the logging area where the potential for stream diversions exist.

For example, §§ 923.3, 943.3, 963.3 (f) Watercourse Crossings could read as follows:

"Permanent watercourse crossings and associated fills and approaches shall be constructed and maintained to prevent diversion of stream overflow down the road and to minimize fill erosion should the drainage structure become obstructed. Where the potential for diversion at a watercourse crossing exists, a rolling dip or grade break shall be constructed to prevent diversion. The RPF may propose an exception . . . standard rule."

L13-1
G2004
26905

Preventing stream diversions at watercourse crossings on forest roads is by far the most cost-effective form of erosion control and prevention. Stream diversions can account for a significant amount of erosion during large storms when culverts plug or their capacities are exceeded. In Redwood Creek, a relatively small watershed, there are over 1,100 miles of logging roads in areas upstream of the park. Based on our knowledge of the watershed, we estimate that at least 50 percent of the crossings have diversion potentials. The significance of stream diversions and the need to prevent them are long standing concepts. The impacts to water quality from stream diversions are well documented in the literature, and language addressing stream diversions at watercourse crossings first appeared in the forest practice rules in 1983.

000054

Instead of permanent, well-constructed dips or grade breaks, foresters have relied too often on the use of standard waterbars. Waterbars are temporary structures and their effectiveness to prevent stream diversions relies on routine road maintenance. Maintenance periods for all roads are short-lived relative to the long-term potential impacts of roads. Waterbars are insufficient and are not a substitute for permanent, well-constructed dips or grade breaks which, if properly constructed, should require little or no maintenance.

L13-2
Group 4
RWS

We recognize that CAL FIRE inspectors for the past few years have been more consistent in requiring dips or grade breaks at crossings with diversion potentials. Many landowners have also voluntarily adopted dips or grade breaks into crossing design. However, because the impacts from stream diversions are significant, we believe the requirement for dips or grade breaks to prevent diversions should be codified for enforceability of a practice that should be routine and is long overdue.

L13-3
Group 4
RWS

Thank you for the opportunity to comment and we hope you find our comments useful. If you have any questions or need further information, please contact Greg Bundros at our Arcata office at (707) 825-5145. We wish you success in implementing an effective rule package for improved protection of water quality and anadromous salmonid habitat.

Sincerely,

/s/ Terrence D. Hofstra
(original signature on file)

Terrence D. Hofstra
Chief, Resources Management and Science

cc: Superintendent



California Regional Water Quality Control Board

Central Valley Region

Karl E. Longley, ScD, P.E., Chair.



L-14

Linda S. Adams
Secretary for
Environmental Protection

Redding Office
415 Knollcrest Drive, Suite 100, Redding, California 96002
(530) 224-4845 • Fax (530) 224-4857
<http://www.waterboards.ca.gov/centralvalley>

Arnold Schwarzenegger
Governor

29 February 2008

Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD SCOPING COMMENTS ON THE NON-RIPARIAN ASPECTS OF THE THREATENED AND IMPAIRED WATERSHED RULES

Thank you for the opportunity to provide comments on the Threatened or Impaired Watershed Rules (T/I Rules). First and foremost, the Central Valley Regional Water Quality Control Board (CVRWQCB) considers the T/I rules as a critical watershed restoration component for achieving salmon recovery goals in the Central Valley Region. While these comments are intended to address the non-riparian aspects of the T/I rules, we remind the Board that watercourses are a complex integration of upslope and upstream materials (e.g., sediment, water, wood), energy (e.g., temperature), and processes. Therefore, these comments have some overlap with the riparian aspects of the T/I rules. Furthermore, we request that the two components of the T/I rules evaluation process (i.e., riparian and non-riparian) be considered in totality rather than on a piecemeal basis.

Application of T/I Protection:

Currently, the "threatened" component of the T/I rules is only applied if a portion of a planning watershed contains threatened, endangered, or candidate species under the Endangered Species Act, or can be restored to the point that these species can access the watershed (i.e., removing artificial barriers). As a result, "non-restorable" planning watersheds within the same drainage basin, but wholly outside the anadromous zone, do not receive any T/I rule protection. While this may be convenient, the process for designating T/I protection is fundamentally flawed.

Watercourses "integrate watershed processes and translate natural and anthropogenic disturbances downslope through the landscape" (Buffington et al., 2003)¹, and successful restoration requires that watershed processes and linkages be considered (Wohl et al., 2005)². While fish may not be able to migrate upstream of a natural fish barrier, this does not prevent the downstream movement of watershed constituents (e.g. runoff, sediment, temperature) to the downstream anadromous zone. Upstream-downstream linkages are strongest for runoff (i.e., peak flows), fine sediment, and fine particulate organic matter, and

¹ Buffington, J. M., Woodsmith, R. D., Booth, D. B., and Montgomery, D. R., Fluvial Processes in Puget Sound Rivers and the Pacific Northwest, in Montgomery, D. R., Bolton, S., Booth, D. B., and Wall, L., (editors) *Restoration of Puget Sound Rivers*, University of Washington Press, Seattle and London, p. 46-78, 2003.

² Wohl, E., P. L. Angermeier, B. Bledsoe, G. M. Kondolf, L. MacDonnell, D. M. Merritt, M. A. Palmer, N. L. Poff, and D. Tarboton. 2005. River restoration. *Water Resources Research*. 41, W10301, doi:10.1029/2005WR003985.



L14-1
6200P
#2
6200

somewhat weaker for temperature, coarse sediment, coarse particulate organic matter, nutrients, and large woody debris (Table 1). This indicates that some aspects of the T/I rules should be applied to upstream planning watersheds that are completely outside the anadromous zone. T/I protection does not necessarily need to be applied to watersheds upstream of large impoundments, as these can attenuate the impacts from upstream activities.

Table 1. Generalized relative likelihood of delivery of eight different constituents from headwater streams to downstream reaches (adapted from MacDonald and Coe, 2007)³.

Constituent	Likely Magnitude Of Delivery	Means Of Delivery
Discharge	High	All flows, minimal delay
Fine sediment (<2 mm)	Moderate to high	All flows, but predominantly high flows
Coarse sediment (>2 mm)	Low to moderate	High flows and mass wasting events
Large woody debris	Low	Mass wasting or extremely high flows
Coarse particulate organic matter	Moderate	Primarily high flows and mass wasting
Fine particulate organic matter	Moderate to high	All flows, especially high flows
Nutrients	Low to moderate	All flows
Temperature	Low to moderate	Low flows

Cumulative Effects Analyses:

The spatial scale of the geographic assessment area needs to be consistent with the resource of concern (i.e., anadromous salmonids). Timber harvest proposed in non-T/I planning watersheds that drain to T/I watersheds need to explicitly assess the potential for cumulative impacts to occur in downstream areas as a result of proposed timber operations.

L14-2
6200P3
Cumulative

Adaptive Management and Monitoring – A Consensus Approach:

True adaptive management requires that land use activities (e.g., harvesting timber, building roads, etc) be arranged as “experimental manipulations that are implemented within the context of well-designed monitoring experiments” (Ralph and Poole, 2003)⁴. This approach is a scientifically credible, proactive way to deal with the ecological uncertainties of land use policy decisions. Currently, the status quo is to deal with the ecological uncertainties of forestry-fish policies in a reactive, scientifically incomplete, and ineffective manner – an approach referred to as socio-political adaptive management (Ralph and Poole, 2003). We strongly urge that the Board adopt an adaptive management framework that receives buyoff

L14-2
6200P
3

³ MacDonald, L. H. and D. Coe. 2007. Influence of headwater streams on downstream reaches in forested areas. *Forest Science*. 53(2): 148-168.

⁴ Ralph, S.C. and G. C. Poole. 2003. Putting monitoring first: Designing accountable ecosystem restoration and management plans. in Montgomery, D. R., Bolton, S., Booth, D. B., and Wall, L., (editors) *Restoration of Puget Sound Rivers*, University of Washington Press, Seattle and London, p. 222-242.



from all the relevant stakeholders (i.e., state agencies; industry; public), and includes an "a priori" list of key questions, resource objectives, and performance targets that can be addressed through focused, rigorous monitoring.

Once an adaptive management framework is adopted, it is imperative that the Board focus monitoring efforts on testing the implementation and effectiveness of the current or future T/I rules. The Board must also focus on rule validation, which will require long-term assessment and monitoring of instream conditions. While the literature review is a necessary step for assessing the conceptual soundness of the T/I rules, it cannot substitute for rule validation.

We understand that funding is the limiting factor for implementing a rigorous, scientifically credible adaptive management process. By fostering buyoff from the relevant stakeholders, the Board can bring forth a consensus product with a higher likelihood of obtaining funding from multiple funding sources. Salmon recovery funding can potentially be tapped by framing the current or future T/I rules as a critical portion of the "watershed" component for meeting salmon recovery goals (e.g., for context see http://www.nwr.noaa.gov/Salmon-Recovery-Planning/Recovery-Domains/Puget-Sound/upload/Ch6_Hab_Forest.pdf). This approach has been successful in Washington State, where more than 60% of the funding for the state's adaptive management program has come from federal salmon recovery funding⁵.

Drew Coe, M.S.
Engineering Geologist
Timber Unit

DC: sae

U:\Clerical Documents\Correspondence_Final\Timber\CoeD\2008\T&I Scoping Comments.doc

⁵ Dave Schuett-Hames, Northwest Indian Fisheries Commission, CMER Monitoring Coordinator, personal communication.





UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 Southwest Region
 777 Sonoma Ave., Room 325
 Santa Rosa, CA 95404-4731

L 15

February 27, 2008

In response refer to:
 151010SWR06SR00128:CA

Stan Dixon
 Chair, California Board of Forestry and Fire Protection
 P. O. Box 944246
 Sacramento, California 94244-2460

Dear Mr. Dixon:

NOAA's National Marine Fisheries Service's (NMFS) letter pertains to the Board of Forestry's (BOF) request for scoping comments on aspects of the Threatened or Impaired Watershed Rules (T/I Rules) other than those related to riparian function.

The BOF administrative record preceding the adoption of the T/I Rules, as well as the Federal Register Notice published June 7, 2000 (65 FR 36074), provides substantive information regarding NMFS findings of the T/I Rules. Few change to the T/I Rules have occurred since their adoption; however, the status of CCC coho salmon is more imperiled.

In California, there are 10 distinct populations of salmon and steelhead listed as either threatened or endangered pursuant to the Federal Endangered Species Act (ESA) of 1973, as amended. Nearly all populations in northern California co-occur with large tracts of forestlands managed under California Forest Practice Rules (FPR). During the listing process for these species, NMFS reviewed the FPR and in all cases concluded they do not adequately protect anadromous salmonids or provide for properly functioning habitat conditions (61 FR 56141; 61 FR 56140; 62 FR 24593; 63 FR 13347; 65 FR 6960; 65 FR 36074). In fact, these Federal Register Notices conclude that California's non-Federal forestry practices are significant factors contributing to salmon and steelhead population declines: declines resulting from the degradation, simplification and fragmentation of habitats through the present or threatened destruction, modification or curtailment of habitat and range, and the inadequacy of existing regulatory mechanisms.

L15-1
 6-20-04
 L15 CAS

NMFS testimony to the BOF in 2000 and in years since (additionally communicated in the June 7, 2000 Federal Register Notice) have outlined that the T/I Rules "constitute a good first step in addressing many concerns raised during the FPR review process; however, they are currently inadequate to protect anadromous salmonids, including steelhead, and their habitat."

Since the 2000 adoption of the T/I Rules there have been no major changes in our general understanding of watershed process and salmonid needs. Habitat conditions for salmonids



continue to decline and, after a recent NMFS status review of all Pacific Northwest salmonids, the federal status of Central California Coast coho salmon (*Oncorhynchus kisutch*) was changed from threatened to endangered. The geographic range of Central California Coast coho salmon overlaps large tracts of private forestlands.

NMFS recommends the BOF re-visit the Federal Register Notice from June 7, 2000 (enclosed) and the administrative record preceding T/I Rule adoption, and that these Rules be considered for permanent adoption or extension.

While NMFS has been temporarily absent from BOF meetings due to the need to develop recovery plans for these species. NMFS looks forward to continued communication that builds from this history of dialog and recognizes collaborative opportunities such as the Habitat Conservation Plan discussions that have unfortunately stalled (See Attachment).

A summary of the issues outlined in the administrative record for the T/I Rules that NMFS believes continues to be important considerations for the protection of anadromous salmonids are:

*NC Steelhead FRN June 7 2000 65 FR36074
Specific Inadequacies of Forestry Rules [36085]*

- 1. Protective provisions that are not supported by scientific literature;
- 2. Provisions that are scientifically inadequate to protect salmonids;
- 3. Inadequate and ineffective cumulative effect analyses;
- 4. Dependence upon RPFs that may not possess the necessary level of multidisciplinary technical expertise to develop THPs protective of salmonids;
- 5. Dependence by CDF on other State agencies to review and comment on THPs;
- 6. Failure by CDF to incorporate recommendations from other agencies; and
- 7. Inadequate enforcement due to staff limitations.

Group 2
Group 3

15-3
GROUP 2
PLAN PREP.
15-4 GROUP 2 PLAN
15-5 " " "

*NC Steelhead FRN June 7 2000 65 FR36074
What Interim Rules Changes (T/I) do not address [36085]*

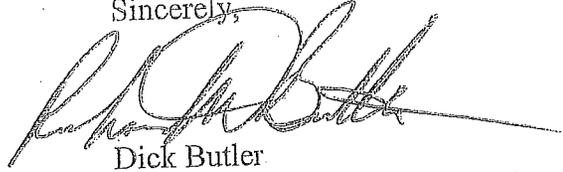
- 1. Site specific variation and long-term riparian functions;
- 2. Non-fishbearing perennial/ephemeral streams that carry water during winter;
- 3. Rate of timber harvest in a watershed;
- 4. All other winter operations and wet weather road and skid trail planning;
- 5. Road planning, construction, maintenance and decommissioning;
- 6. Loss of riparian function and chronic sediment inputs from streamside roads;
- 7. Unstable areas except for inner gorges;
- 8. Timber harvest preparation, review, implementation, enforcement and validity;
- 9. Harvest plan exemptions; and
- 10. Watershed analysis, cumulative effects, adaptive management and monitoring.

15-86 GROUP 3 LOG OPS
GROUP 1 INTENT
15-88 GROUP 4 LOG OPS
15-76 GROUP 2 PLAN
PREP.
15-82 GROUP 4 LOG OPS
15-84 GROUP 3 CUMUL
GROUP 5 MONIT.

Until a comprehensive scientific peer review process is implemented and appropriate changes to FPR/THP approval process are made, properly functioning conditions for salmonids would not exist on non-Federal forest lands in California.

NMFS is currently preparing recovery plans and will have more specificity regarding T/I Rule considerations in the coming months and will prepare an outline of those considerations. Thank you for your consideration. If you have any questions or would like to meet with staff regarding comments in this letter please contact Charlotte Ambrose at (707) 575-6068 or via email at charlotte.a.ambrose@noaa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Butler", written over a horizontal line.

Dick Butler
Santa Rosa Area Office Supervisor
Protected Resources Division

Enclosures

cc: Russ Strach, NMFS Sacramento
John McCamman, DFG Sacramento
Glenda Marsh, DFG Sacramento



State Water Resources Control Board



L16

Linda S. Adams
Secretary for
mental Protection

Executive Office

Tam M. Doduc, Board Chair
1001 I Street • Sacramento, California 95814 • (916) 341-5615
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5621 • <http://www.waterboards.ca.gov>

Arnold Schwarzenegger
Governor

March 19, 2008

Stan Dixon, Chairman
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Dear Chairman Dixon:

SCOPING COMMENTS REGARDING THREATENED AND/OR IMPAIRED WATERSHED RULES

Thank you for the opportunity to comment on the Threatened and/or Impaired Watershed (T/I) Rules. These rules are primarily intended to protect anadromous salmonids that have been listed as threatened or endangered under the State or federal Endangered Species Acts (ESAs). Aquatic habitat for threatened or endangered species is one of the beneficial uses of water that are designated in water quality control plans and over which the State and Regional Water Boards have regulatory authority and responsibility.

Following are the State Water Board staff comments on the proposed T/I Rules. Further, the State Water Board staff supports the comments of the Central Valley and North Coast Regional Water Boards that have been submitted to you on this topic.

Goals

The T/I Rules currently set forth a goal of preventing deleterious interference with watershed conditions that primarily limit beneficial uses of water, restorable uses of water for fisheries, needed riparian habitat, and sensitive nearstream conditions (Title 14, California Code of Regulations, Section 916.9 (14 CCR 916.9)). The T/I Rules also require compliance with the terms of any relevant Total Maximum Daily Load (TMDL) (14 CCR 916.9 (a)).

L16-1
620001
INTENT

Pursuant to Clean Water Act Section 303(d), the goal of Water Board TMDL implementation plans is to actively contribute toward restoration of impaired beneficial uses of water; simply protecting against further impairment is not sufficient. A TMDL

implementation plan has not yet been developed or adopted for a number of 303(d)-listed water bodies that support ESA-listed anadromous salmonids. For such waters, the T/I goal is not consistent with the 303(d) goal. Unless the T/I Rules incorporate the 303(d) goal, Water Boards will need to impose requirements over and above those in the Rules where this situation exists. We recommend that the Board of Forestry and Fire Protection (BOF) take the opportunity to ensure consistency between these goals.

Balancing Management Objectives

The Z'Berg-Nejedly Forest Practice Act establishes a state policy of maximizing sustained production of timber products while "giving consideration" to other environmental and human values (Public Resources Code, Section 4513). In a general sense, State and Regional Water Boards agree with this policy; we would rather not see sustainably managed forest land converted to other uses. On the other hand, we do not believe that maximum timber production represents, or was intended to be, the over-riding priority in all situations.

L16-2
G200P1
INTENT

We believe that the 303(d) listing of a water body and/or the ESA listing of a species establishes a critical need to elevate the goal of restoring or conserving the listed entity above the goal of maximizing sustained timber production. We recommend that BOF take this opportunity to collaborate with Water Boards and other affected agencies to help harmonize and balance differing environmental mandates in order to resolve this long-standing source of misunderstanding and contention.

Burden of Evidence

We suggest that the 303(d) listing of a water body or the ESA listing of a species should change the burden of evidence compared to business-as-usual. A project proponent becomes directly responsible for clearly demonstrating that the proposed project can be implemented in a manner which will contribute to recovering or conserving the listed entity. We recommend that BOF review the legal and environmental issues involved with the listed water bodies and species.

L16-3
G200P1
INTENT

Scope of T/I Rules Application

Currently, in a watershed that supports ESA-listed anadromous salmonids, the applicability of the T/I Rules is deemed to stop at the first permanent barrier to upstream anadromy. Temperature, sediment and other water quality effects from upstream timber operations can readily migrate past the barriers to affect the downstream salmonid population. The distances and severity of the impacts can vary considerably from case to case. We recommend that BOF take the opportunity to

L16-4
G200P2
G200

collaboratively review how this very important deficiency in the T/I Rules should be remedied.

Cumulative Impacts Analysis under the T/I Rules

We note that where waters are 303(d)-listed, the Rules currently require that a registered professional forester assess the degree to which a proposed timber operation could impact any portion of a water body that is located within or downstream of the proposed timber operation, and propose appropriate mitigation measures (14 CCR 898). It would seem that the same provision should apply where fish are ESA-listed (14 CCR 916.9(b)), although it currently does not. We recommend that BOF review and amend this deficiency.

L16-5
GROUP 3
CUMUL

Interagency Collaboration

The T/I Rules provide a process for interagency/stakeholder collaboration in developing watershed-specific Rules addressing 303(d)-listed waters (14 CCR 916.12). This could produce watershed-specific Rules that can be used in lieu of separate TMDL implementation plan requirements. Despite the numerous 303(d) listings and TMDL implementation plans that have been adopted, the Department of Forestry and Fire Protection (CDF) and BOF have never implemented this Rule section. We recommend that BOF and CDF implement this section to more proactively address 303(d) issues and minimize the need for duplicative regulatory processes. This process is (or could be) similar to that used with considerable success in the State of Washington.

L16-6
GROUP 5
NOT

Proactive vs. Reactive

Water Boards would like to prevent water bodies from becoming 303(d)-listed in the first place. There are a number of water bodies that have not yet been 303(d)-listed, but are headed in that direction, some with timber operations as a contributing factor. We would like BOF to ensure that corrective/restoration efforts are initiated before a listing becomes necessary, as the subsequently needed TMDL restoration measures would be even more stringent. Similarly, we would like to be able to use implementation of an effective BOF restoration program to support the de-listing of already-listed water bodies. We recommend a collaborative effort to achieve this objective.

L16-7
GROUP 1
INTER

Sediment Sources

More specifically, the T/I Rules seem to be overly focused on using riparian zones as a primary means for buffering aquatic habitat for anadromous salmonids from effects of timber operations. While we agree that such zones can be very effective in many

L16-8
GROUP 4
LOBOPS
GROUP 3
CUMUL

instances, we are concerned that there is not adequate recognition of landforms and processes that are inherently sources of significant sediment pulses (e.g., debris flows) that can overwhelm watercourse and lake buffering capability and produce valley-bottom deposits that continue to leak into streams for many decades. We recommend the T/I Rules be amended to address these deficiencies. We also recommend that a thorough review of the scientific literature be performed to better understand how to manage forest land where these landforms and processes are present.

Conclusion

As discussed in the March 2008 meeting of your Forest Practice Committee, we are encouraged that BOF intends to take seriously the comments from other agencies. State Water Board staff will be participating in your rule-making process. In addition, we invite you to participate in higher-level policy dialogs between our respective Executive Offices on an as needed basis. If you have any questions on this subject, please contact Gaylon Lee, State Water Board's Forestry Coordinator, at (916) 341-5478, or by e-mail at glee@waterboards.ca.gov.

Sincerely,



Jonathan Bishop
Chief Deputy Director

cc: Mr. Robert Klamt
Interim Executive Officer
North Coast Regional Water Quality Control Board

Mr. Jim Pedri
Deputy Executive Officer
Central Valley Regional Water Quality Control Board

Mr. Gaylon Lee
Forestry Coordinator
State Water Resources Control Board

L 17



California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman



Linda S. Adams
Agency Secretary

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135

Arnold
Schwarzenegger
Governor

March 12, 2008

Mr. Stan Dixon, Chairman
Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Dear Chairman Dixon:

Subject: Scoping Comments for the Threatened or Impaired Watershed Rules
File: Board of Forestry and Fire Protection – general

Thank you for the opportunity to provide scoping comments on the Threatened or Impaired Watershed (T/I) rules which are designed to protect anadromous fisheries from the potential impact of timber harvest activities.

The following comments are submitted to assist the Board of Forestry in developing rules that will protect and restore anadromous salmonids and move the T/I and Forest Practice Rules towards compliance with the North Coast Water Quality Control Plan (Basin Plan) and adopted Total Maximum Daily Loads (TMDLs).

L17-1
GROUP 1
INTENT

1. The current T/I Rules apply in planning watersheds where anadromy is present and only to the limit of anadromy. This ignores the basic hydrologic fact that disturbances translate downslope and downstream with the potential of upstream impacts and conditions to influence downstream anadromy. The T/I Rules should apply to planning watersheds upstream of the limit of anadromy, except perhaps in a more limited sense for those watersheds above major impoundments.

L17-2
GROUP 2
GEO

Additionally, to be responsive to the potential for cumulative effects, the spatial scale of applicability of the T/I rules must expand beyond a T/I watershed area to consider T/I rules in those "non-T/I" watersheds that flow into a "T/I" watershed.

L17-3
GEO-G2
GROUP 3
CUML

2. The current T/I Rule protection measures for Class I watercourses likely meet the protection requirements for North Coast temperature TMDLs when applied throughout the impaired watershed. Application only to the limit of anadromy is not fully protective (see comment 1 above).

L17-4
GROUP 2 GEO
~~L17-4~~
GROUP 1
INTENT

California Environmental Protection Agency

Recycled Paper

L17-4
GROUP 3
OPS

The protection measures afforded to Class II watercourses under the T/I Rules (and the Forest Practice Rules in general) do not meet the implementation requirements of North Coast temperature TMDLs nor the water quality objective for temperature contained in the Basin Plan. To meet the requirements of temperature TMDLs, Class II WLPZ canopy requirements need to be increased and applied throughout the impaired watershed, not just in planning watersheds where anadromy exists or to the limit of anadromy. In the absence of such a change, the Regional Water Board staff will use the Timber Harvest Plan review process and other regulatory mechanisms to ensure timber harvesting is compliant with the Basin Plan temperature objective and temperature TMDLs.

L17-5
Group 1
INTENT
Group 4
LOB OPS

3. The current T/I Rules contain no additional protection measures for Class III watercourses, yet these are the most prevalent watercourse type on the landscape, and a watercourse capable of transporting sediment to higher order streams with beneficial uses that support anadromous species. As such, the Board of Forestry should consider further Class III protection measures for the T/I Rules for anadromous salmonid protection.

L17-6
~~Group 1~~
Group 4
LOB OPS

4. In T/I watersheds and 303(d) impaired watersheds, restoration of listed salmonids and the beneficial uses of water should be at least on par with considerations for maximum sustained production of timber.

17-7
Group 3
INTENT

5. As became apparent in hearings on the T/I rules sunset clause two years ago, a body of data specifically collected to evaluate the rules does not exist. Focused monitoring of the effectiveness of the T/I rules in meeting the objectives stated in the rules should be developed as a tool for future modifications of the rules.

17-8
MONITORING

Thank you for the opportunity to provide scoping comments on the T/I rules. Regional Water Board staff is available to provide details on the above recommendations, answer any questions regarding our comments, and in general, assist the BOF in crafting rules that meet our statutory authority. If you have any questions or need more information, please call David Hope of our staff at (707) 576-2830.

Sincerely,



Robert R. Klamt
Interim Executive Officer

L18

Zimny, Chris

From: Michele Dias [micheled@foresthealth.org]
Sent: Thursday, April 03, 2008 4:06 PM
To: Zimny, Chris
Subject: T/I Intent and Goals
Attachments: Intent-Goal Sections - Legal Rights, Responsibilities of Private Landowners.doc

Chris,

In preparation for May 5th discussion on T/I Intent and Goal sections, I pulled together legal citations supporting my position that the existing Intent and Goal sections exceed both the intent and language of the FPA, CEQA and APA. I know that you are formulating questions for counsel based on my concerns at the FPC meeting on Tuesday. Take a look at this summary of code and statutes. It may clarify my concerns. Then again, it may totally confuse you.

Thanx, M

L18-1

<<Intent-Goal Sections - Legal Rights, Responsibilities of Private Landowners.doc>>

T/I RULE REVIEW – INTENT, GOAL SECTIONS

California Forestry Association

April 2008

Upon review of the Protections for Threatened or Impaired Watersheds, 2000 rules (T/I), Intent and Goal sections, there is concern that "mission creep" has occurred resulting in regulations that far exceed the responsibility and authority of the Board of Forestry (Board).

18-2

As a result, the California Forestry Association (CFA) requests that you consider the following codes and statutes as you prepare to amend the California Code of Regulations, section 919 (Intent of Watershed and Lake Protection); section 916.2 (Protection of the Beneficial Uses of Water and Riparian Functions); and section 916.9(a) (Protection and Restoration in Watersheds with Threatened or Impaired Values – Goals).

18-3

In addition to the Forest Practice Act, you will find citations from the California's Government Code (APA), Environmental Quality Act (CEQA), and the Fish and Game Code because the T/I rules include provisions and measures that fall within those codes.

18-3

Question Presented:

Has the Board exceeded the intent of the Legislature and its own policies when it states, "[i]t is the intent of the Board to restore, enhance, and maintain the productivity of timberlands while providing **equal consideration** for the beneficial uses of water."

18-4

Please Consider:

Board of Forestry Mission Statement

The California State Board of Forestry and Fire Protection's (Board) mission is to provide policy leadership and to generate public interest and support in those matters key to the future of the state's forest and rangelands.

18-5

Board Policy 0310.4

"The intent of the Forest Practice Act is to create a comprehensive and effective system of regulations of use of timberlands to ensure productivity, sustained yield, and **due consideration** of watershed, recreation, wildlife, range, aesthetic, and fishery values."

18-6

Board Policy 0334.1

"In light of these findings, the Board has concluded that protection of the public's interest in economically supplying its needs for forest products in this and future generations requires vigorous and coordinated efforts by the Board to (1) maintain private timberland as a source of current and future timber supply, (2) promote establishment, maintenance, and productive management of forest growing stocks needed to ensure the long-term optimum productivity of such lands . . ."

18-7

Forest Practice Act – Article 1, General Provisions

"The Legislature thus declares that it is the policy of this state to encourage prudent and responsible forest resource management calculated to serve the public's need for timber and other forest products, **while giving consideration to**

18-8

the public's need for watershed protection, fisheries and wildlife, and recreational opportunities alike in this and future generations." PRC 4512(c)

"It is the intent of the Legislature to create and maintain an effective and comprehensive system of regulation and use of all timberlands so as to assure that: (b) The goal of maximum sustained production of high-quality timber products is achieved **while giving consideration to** values relating to recreation, watershed, wildlife, range and forage, fisheries, **regional economic vitality, employment,** and aesthetic enjoyment." PRC 4513(b)

18-9

CEQA Guidelines

"To qualify for certification [functional equivalency] pursuant to this section, a regulatory program shall . . . meet all of the following criteria:

(1) The enabling legislation of the regulatory program . . . (B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by the standards **set forth in the enabling legislation.**

18-10

Question Presented:

How does the APA limit the scope of Board rulemaking?

18-11

Please Consider:

"Each regulation adopted, to be effective, **shall be within the scope of authority conferred** and in accordance with standards prescribed by other provisions of law." CGC 11342.1

18-12a

"Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, **no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.**" CGC 11342.2

18-12

Question Presented:

What does the APA require of private landowners to mitigate project impacts?

18-13

Please Consider:

Performance standards v. Prescriptive measures
Legislative Intent

"The imposition of prescriptive standards upon private persons and entities through regulations where the establishment of performance standards could reasonably be expected to produce the same result has place an unnecessary burden on California citizens and discouraged innovation, research, and development of improved means of achieving desirable social goals." GCG 1340(d)

18-14

"The complexity and lack of clarity in many regulations put small businesses, which do not have the resources to hire experts to assist them, at a distinct disadvantage." CGC 11340(g)

18-15

"It is the intent of the Legislature that agencies **shall actively seek to reduce the unnecessary regulatory burden on private individuals and entities** by substituting performance standards for prescriptive standards wherever performance

standards can be reasonably expected to be as effective and less burdensome, and that this substitution shall be considered during the course of the agency rulemaking process." CGC 11340.1(a)

18-16

Question Presented:

What does CEQA require of private landowners in mitigating project impacts?

18-17

Please Consider:

"To qualify for certification [functional equivalency] pursuant to this section, a regulatory program shall . . . meet all of the following criteria: . . .

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following: (A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or **feasible mitigation measures** available. PRC 21080.5

18-18

Feasible means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. CEQA Guidelines 15363

Question Presented:

What does the Fish and Game code require of private landowners to mitigate impacts?

18-19

Please Consider:

Take Prohibition

(b) "The department may authorize, by permit, the take of endangered species, threatened species, and candidate species if all of the following conditions are met: . . . (2) . . . The measures required to meet the obligation shall be **roughly proportional** to the extent of the impact . . . the measures required **shall maintain the applicant's objectives to the greatest extent possible.**" FGC 2081

18-20

Question Presented:

Are there limiting factors the Regional Water Boards, pursuant to the Clean Water Act, must consider when adopting a TMDL? Did the Regional Board engage the Board during adoption and implementation of TMDL strategies?

18-21

Please Consider:

The State Water Board policy requires consideration of "the possible mechanisms by which pollution can be reduced. Failing to consider implementation options can easily lead to allocation schemes that are far more costly than necessary or in the worst case, unachievable."

"The TMDL strategy in California relies on an **adaptive process** that matches management capabilities with scientific understanding. It relies heavily on engaging the public and cultivating an understanding of watershed issues."

18-22