March 2, 2015

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

Re: Working Forest Management Plan (WFMP) Proposed Rule Language

Dear Dr. Gilless and Members of the Board:

The Forest Landowners of California (FLC) has reviewed the above-referenced rule package. We would like to express thanks to you, the management committee, and Board staff for the time and effort you have spent to get this rule package to its current state. We especially appreciate that the management committee and Board staff consulted legislative staff when questions of intent arose during the development of the legislative process.

FLC and the California Licensed Foresters Association (CLFA) had originally sponsored AB 2170 (Chesbro, 2012). The bill was withdrawn at the end of the 2012 legislative session to provide additional time to fully develop the concepts and legislative language that could draw diverse stakeholder support with time to consider and comment upon the broad framework of the proposed legislation as well as the language of the WFMP. In 2013, Assemblymember Chesbro asked FLC and CLFA members to join his Forestry Advisory Committee composed of a diversity of stakeholders convened to consider an extension of the current NTMP process that had been approved in 1989, 24 years earlier. From that Committee, the redrafting of the WFMP took shape throughout numerous Committee meetings, public meetings, and field trips to become AB 904 (Chesbro, 2013). FLC and CLFA members have been involved in every step of the process from concept development, numerous meetings with legislators, staff, and interested parties, hearings in both legislative houses, its signature by Governor Brown, and this rule making process with the Board of Forestry. Members of both organizations have volunteered hundreds, if not thousands, of hours into this effort. This is the most comprehensive forestry bill since the 1973 Z’berg Nejedly Forest Practice Act and has come at the combined effort of landowners and foresters and other interested stakeholders.

Significant input was provided by Cal Fire staff (monitoring provisions), the Water Quality Control Boards (erosion control plan), and the Department of Fish and Wildlife (conservation of both flora and fauna). This input was accepted by most of the stakeholders involved in the process in efforts to balance environmental concerns with the development of a long-term forest management plan that was functional and economically viable.
FLC requests that the Committee and Board retain that balance in the final WFMP regulatory language. Throughout the legislative process there seemed to be broad agreement that the interest of the state would be served by enabling moderately large private timberland landowners to commit to a long term management strategy through the use of a permit such as the WFMP.\(^1\)

This benefit to the state will only materialize if the WFMP retains its utility and landowners’ interests are served by entering into this permit.

We strongly urge the Board to not stray from the many negotiated items included in AB 904 (Chesbro, 2013). Please understand that FLC and CLFA want this permit to succeed and that we are providing these comments based on input from our members and professionals who have experience in the preparation and supervision of NMTPs, which serve largely as the model for the proposed WFMP.

The regulatory community has requested numerous changes to the proposed WFMP regulations that correct perceived issues with the current NTMP processes, the general model for the WFMP, without taking the time to show environmental deficiencies in the performance of current Forest Practice Rules (FPRs). Our hope and vision has always been that this permit be widely adopted by eligible landowners and not become an unusable addition to FPRs much like the PTHP/PTEIR has proven to be.

Though FLC is supportive of the proposed rule package, we would like to offer the following comments on a few specific outstanding issues we believe would strengthen the utility and protections offered by the WFMP.

5-Year Review

The idea of the 5-year review was brought forward by then Deputy Director Bill Snyder in an attempt to address some of the criticism that the Department receives about NTMPs including issues about over harvesting and the inability to verify changed conditions in the field by public trust agencies. While numerous opportunities currently exist for inspections by agency staff during active operations and the post-harvest maintenance period after Notices of Operations are currently filed, FLC and CLFA agreed to the five year review for the WFMP. This intent of


The Non-Industrial Timber Management Plan program has become an important timber management tool for qualifying NIPF landowners, and its use is growing each year. In exchange for committing to a long-term program of uneven-aged management and sustained yield, a NTMP offers the benefits of: reduced plan preparation costs for subsequent notices of timber operations . . . and greater regulatory certainty by committing to -- with some important exceptions -- the Forest Practice Rules that are in place when the NTMP is approved.

. . . Unfortunately, the 2,500 acre limitation excludes 20 percent of the NIPF area (based on ownership area reported by Birch (1977)). Raising this acreage limitation would increase the number of landowners and area that could utilize NTMPs. For example, increasing the ownership limit to 5,000 acres would make an additional 562,000 acres eligible for NTMPs allowing most of the NIPF acres to be available for the NTMP program. This change would benefit both landowners and the state by providing an opportunity for these additional timberlands to be placed into a sustained yield and uneven-aged management regime.
the review was meant to be primarily a paper review of the administrative record, not an automatic mandatory field review, nor was it intended to open up the approved plan for new review by agencies or the public. The intent of this review was for the Department to convene a meeting with the interdisciplinary review team to verify that operations have been conducted in accordance with the plan and applicable laws and regulations. Public input would be considered by the review team members if it is included in the public record at the time of the review.

The legislative intent on this is clear, verification that operations have been conducted in accordance with the plan and applicable laws and regulations. In the proposed regulation currently before this board, consideration of potentially significant adverse impacts to the environment that may occur from continuance of the WFMP, as well as the Department being presented with a fair argument that a project may have a significant adverse effect on the environment, goes beyond verification that operations have been conducted in accordance with the plan and applicable laws and regulations. This constitutes a discretionary CEQA review of an approved CEQA document. We are not aware of anything in California statute allowing this to occur. The way that the 5-Year review is currently structured, no WFMP will ever truly be an approved environmental review document.

There is currently no deadline for completing the 5-year review process, only that the meeting shall convene within 30 days of each 5-year anniversary and a field inspection, if needed, occur within 60 days of each 5-year anniversary. CLFA suggests, and FLC supports, the addition of language requiring that a final report be provided within 60 days of the 5-year anniversary, or 90 days if a field inspection is needed. This would give the review team at a minimum 30 days from the meeting, or field inspection if necessary, to provide the findings of the review.

Active vs. Potential Erosion

Board Member Andre approached Assemblymember Chesbro’s consultant in late August of 2013 with the then current language of the Road Rules to discuss a possible modification to Section 4597.2(d) in AB 904. AB 904 uses the term “active erosion” when dealing with the RPF identifying erosion sites while laying out the plan, while the Road Rules also include use the term “potential erosion.” Member Andre made his case for standardizing the language of AB 904, however, legislative staff received letters supporting retention of the language in the draft legislation as well as documentation as to why this could be a problem with a plan that be effective for an extended period of time. To identify every “potential erosion site” would be to say that the entire property has the ability at some point in time to erode. As parties involved in the negotiations of bill language, FLC does not believe that is what the Legislature intended. FLC believes that the Legislature intended for a thorough evaluation of the plan area. The WFMP was to address the items that were causing a problem (if any) or had a high likelihood or probability of causing problems in the near future, at the time the plan was submitted, reviewed, and approved. Furthermore, there are several requirements included in the Harvest Notice process which require the RPF/Landowner to notify Cal Fire about significant changes or a lack thereof. These include provisions of (1094.8(h)) requiring, in part, that “based on a field evaluation, there are no physical environmental changes in the Working Forest Harvest Notice area that are so significant as to require any deviation of the WFMP” (emphasis added). The RPF must sign off on this statement subject to provisions of his/her license.

---

2 See Exhibit B setting forth the language in the various versions of the legislation.
In addition to this issue, which was the legislative intent, there is the issue of community roads. An NTO may only be open for a section of ground each year. Prior to the completion of that area, all erosion control structures must be in place and properly functioning. Imagine if you will a road that has numerous owners up/downhill of the property and has an easement for ingress and egress. The landowner harvests timber, replaces/repairs erosion control structures on their land prior to the completion report being submitted. Now imagine that the road gets damaged by other users of the road during the winter and summer (dust) from a lack of maintenance every subsequent winter. The landowner will never be able to close out the plan as there are always going to be “potential erosion sites.” While ultimately a civil matter, the risk of citations or violations by Cal Fire or other public trust agencies increases the likelihood of the plan not being utilized. This is one of the problems with the Road Rules with which we tried to point out during their creation: they often don’t work well for NTMPs and WFMPs as they are long-term documents in contrast to the maximum seven-year life for a THP. If an NTO can’t be closed out, then future Notices are limited or prohibited, thus making the WFMP null and void. The WFMP was created by the stakeholders, negotiated with the state agencies, and ultimately had approval from the Legislature as a positive step forward for forest management in California. FLC does not believe that it is within this Board’s authority to alter legislative language without documentation of legislative intent or identification of actual problems.

15380 Species

There are two issues with regard to species listed under CEQA as 15380(d). In the legislative language of AB 904, it is very clear that 15380(d) species be discussed in only the notices of each operation. The Management Committee, at the behest of DFW, has decided that 15380(d) species should be discussed within the body of the WFMP. This again would change something which was done intentionally by the Legislature.

Section §15380 appears only one time in statute, PRC 4597.11(f), the Working Forest Harvest Notice (Notice). This was done because these species may move, die or otherwise vacate a site, so the Legislature decided that the appropriate time to deal with species that aren’t currently listed as endangered or threatened is at the time a Working Forest Notice is submitted to Cal Fire.

PRC 4597.2(h) limits disclosures of take avoidance methodologies, enforceable protection measures, habitats, and how management will maintain those habitats over time for state or federally listed threatened, candidate, or rare plant or animal species. There is no language in this section that would imply that similar disclosures were intended to extend to non-listed species.

Conservation of biological resources is of great importance to the success of the WFMP. The WFMP is a long-term management plan potentially covering from 2,500 to 14,999 acres where timber operations may not occur on some of those acres for many long periods of time, ensuring the conservation of biological resources creates unique challenges. Listed and sensitive wildlife and plant species move with time. Disclosure of their locations in the WFMP itself provides a snapshot in time but does little to ensure the long-term conservation of the species. This can only be achieved through targeted field investigations in connection with Harvest Notices. The Legislature understood this in tying the requirement to disclose new locations of listed and sensitive species as amendments to the plan prior to filing each Notice. Demonstration of take avoidance for state and federally listed species is required; it is not required for species
qualifying for consideration under 15380(d). FLC believes the legislative intent was to avoid a requirement for inclusion of information in the WFMP that accomplishes little or nothing that would conserve these species until operations are imminent. In the interest of efficiency and ensured conservation of the species, the Legislature chose instead to rely on field evaluations conducted prior to submission of Notices.

The specific problem arises in 1094.6(n)(1) Contents of WFMP. As currently worded the plan must address state or federally listed threatened, candidate, and endangered species; rare plants; Sensitive Species pursuant to 14 CCR § 895.1; and species that meet the criteria under 14 CCR § 15380(d), that timber operations could potentially impact through potential adverse changes to habitat. 14 CCR § 15380(d) is found under Chapter 3 of the Guidelines for Implementation of the California Environmental Quality Act: thus, any consideration of species qualifying for consideration under 14 CCR § 15380(d) is bound by the limitations of CEQA. In order to address these species, the RPF would be forced to speculate about the timing of harvest, speculate regarding stand conditions at the time of harvest, and speculate as to whether a species is present or absent at the time of harvest. 14 CCR § 15187 Environmental Review of New Rules and Regulations instructs that environmental analysis should not engage in speculation or conjecture. It would be inappropriate for this Board to force RPFs to engage in speculation as it relates to species qualifying for considerations under 14 CCR §15380(d).

Section 1094.8 (g) and section 1094.8(g)(2) requires the RPF to amend the WFMP disclosing new locations of all plant and animal species which are listed as rare, threatened, endangered or that meet the requirements for 15380 listed species “within and adjacent to the logging area”. There is no guidance on what constitutes “adjacent”. FLC would suggest consideration that a distance of 100 feet from the Harvest Notice perimeter be utilized for the provisions of these sections as this would be consistent with the distance from appurtenant roads that are considered to be part of the logging area.

CLFA in its comment letter dated February 26, 2015 addressed several administrative and technical issues that should be resolved to make the proposed regulatory process more efficient. FLC briefly restates these below and supports the changes suggested by CLFA.

Landowner vs. Plan Submitter vs. Designated Agent vs. RPF

There are numerous instances where the responsibility falls on one individual or another, but there are some areas that need some substantial cleanup before this rule package should go forward as there are some serious inconsistencies.

An example of this can be found in § 1094.31

“Cancellation of the plan may be appealed by the plan submitter(s) or landowner(s) the Designated Agent utilizing the process pursuant to PRC § 4597.6(e)(1) and 14 CCR 1094.17(e).”

The plan submitter and the landowner(s) agent may be able to appeal the cancellation of a WFMP, but the landowner themselves can’t. Given the seriousness of a WFMP cancellation, the landowner(s) should have direct standing to appeal the cancellation.
14 CCR 1094.10(c) requires an amendment identifying a Designated Agent at least five (5) days prior to filing the first Working Forest Notice. This should only be a requirement if the landowners’ Designated Agent is different than that in the contents of the WFMP and not amended for every Notice.

**Logging Roads vs. Roads**

Throughout the current language of the WFMP, there are various uses and inferences to roads and logging roads. We would suggest that the current language be cleaned up to clearly discuss logging roads as not all roads are used for logging purposes.

Page 15 line 24  
Page 17 line 18  
Page 21 line 11  
Page 21 line 19  
Page 41 line 21

§1094.14 Notification of Commencement of Operations

Add e-mail notification as this has become the standard acceptable practice for communications between RPFs and the Department.

§1094.19 Nonconformance of WFMP

This language is redundant to 1094.17(c). We suggest 1094.19 be struck, and the language of 1094.19 replace the current language in 1094.17(c).

§1094.6 Contents of WFMP (Growth and Yield)

As currently written, items which pertain specifically to growth and yield appear seven times within 1094.6, spanning six unique sections. More specifically, (f)(3), (g) & (g)(3), (h)(1), (m)(1), (n), and (p)(1). While growth and yield is an indisputably important facet of the WFMP, consolidation of these references to fewer sections or one section may serve to better guide the RPF in development of the document, and aid in plan review.

**Review of Newly Developed Forms**

As new forms are developed for the WFMP, we ask that the review of these forms be public so the landowner and RPF community is able to review and comment on the content.

§1094.11 -- RPF Responsibilities

Currently, the FPRs contain three separate configurations of Registered Professional Foresters Responsibilities in 1035.1, 1090.10 and 1092.12. The addition of the RPF Responsibilities for the WFMP would create a total of four iterations. Please complete a thorough analysis of RPF Responsibilities to insure all needed responsibilities are captured and insure consistency across the current range of responsibilities.
1094.11(b)(1): Add e-mail notification as this has become the standard acceptable practice for communications between RPFs and the Department.

Add "All disclosures made between and RPF and an affected party pursuant to this section may be kept confidential", in order to be consistent with both 1092.12(f) and 1035.1(d).

Thank you for considering these comments for incorporation into the WFMP rule plead.

Sincerely,

Lawrence D. Camp
President
Forest Landowners of California
RPF No. 1698