February 26, 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 California Licensed Foresters Association (CLFA) has reviewed the above-referenced rule package. We would like to commend you, the committee, and Board staff for the time and effort you have spent to get this rule package to its current state. We especially appreciate the frequent consultations with legislative staff when questions of intent arose during the development process.

The Working Forest Management Plan (WFMP) traces its origin to AB 2170 (Chesbro, 2012). Sponsored by CLFA and Forest Landowners of California (FLC), AB 2170 was removed from further consideration in November 2012 because more time was needed to ensure that legislation enacting the WFMP would benefit the target landowners while satisfying needed environmental protections. Early in 2013 Asm. Chesbro asked CLFA and FLC to join his Forestry Advisory Committee comprised of a diverse array of stakeholders convened to develop the WFMP concept. This Committee held numerous hearings, public meetings, and field trips building consensus and support shaping the WFMP concept into what became AB 904 (Chesbro, 2013). CLFA and FLC are heavily invested in the WFMP having spent hundreds, if not thousands, of hours on what is arguably the most comprehensive forestry bill since the 1973 Z’berg Nejedly Forest Practice Act coming to fruition due to the diligent work of all stakeholders involved.

Exercising patience and holding the WFMP concept from the 2012 to the 2013 legislative session gave a broad array of stakeholders, including various state agencies, adequate time to consider and comment upon the framework of the WFMP. This included significant input from Cal Fire (monitoring provisions), Water Quality Control Boards (erosion control plan) and Department of Fish and Game (habitat conservation). This input was embraced by all stakeholders to balance environmental considerations with the ultimate utility of the WFMP.
We ask that the Board recognize that final legislation enacting the WFMP represents a delicate balance not easily achieved by a diverse and broad array of stakeholders. Throughout the legislative process seemingly broad agreement that the interest of the state would be served by having moderately large private timberland landowners commit to a long term management strategy gave rise to tireless and diligent effort on the part of all stakeholders culminating with the Governor signing the WFMP into law on October 8, 2013. This benefit to the state will only materialize if the WFMP retains its utility and landowners’ interests are served by entering into this permit.

In order for the WFMP to succeed, it must be used. Throughout the rulemaking process we have witnessed well intentioned requests by agency representatives threaten to erode the appeal of the WFMP which represents a real opportunity to implement a true watershed management approach. If the WFMP becomes too burdensome, it will not be used and all the hard work of all involved, including members of your Board, in developing the enacting legislation and subsequent FPRs will have been for nothing. **We strongly urge the Board to not stray from the many negotiated items included in AB 904** (Chesbro, 2013).

Please understand that CLFA and FLC want this permit to succeed and that we are providing these comments with the end users in mind. The regulatory community has taken this opportunity to request every improvement to existing processes they have dreamed of without taking the time to show environmental deficiencies in the performance of current Forest Practice Rules (FPRs). Please consider that this document from its initial inking has only gotten more restrictive. There have been no concessions given from any other parties involved besides the landowners that may eventually utilize the WFMP. This has truly been a one way street in terms of language development and it weighs on us heavily. 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 proved to be.

Though we are generally satisfied in with 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 benefits 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 specifically about over cutting their growth yield analysis. This was meant to be a paper review of the administrative record, not a mandatory field review, nor was it intended to open up the approved plan for new review. 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.**
The legislative intent on this is clear, verification that operations have been conducted in accordance with the plan and applicable laws and regulations. As is currently before this board, consideration of potentially significant adverse impacts to the environment that may occur from continuance of the WFMP, or 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 constituting 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. We suggest a final report be provided within 60 days of the 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.

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 was something which was done intentionally by the legislature.

15380 appears only one time in statute, PRC 4597.11(f), the Working Forest Harvest Notice (Notice). This was done because as these species move, die or otherwise vacate a site, the legislature decided that the appropriate time to deal with species that aren’t currently listed as endangered or threatened is at the time the 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. Being a long term management plan spanning thousands of acres where timber operations will not occur on some of those acres for many decades, 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 nothing to ensure the long-term conservation of the species. This can only be achieved through targeted field
investigations in connection with 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). The clear legislative intent was to avoid loading up the WFMP with information that accomplishes nothing in the interest of conservation of these species. 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 lies 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) (emphasis added), that timber operations could adversely impact by potential changes to habitat. 14 CCR § 15380(d) is found under Chapter 3 of the Guidelines for Implementation of the California Environmental Quality Act meaning that 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 timing of harvest, speculate the stand conditions at the time of harvest, and speculate as to whether the species is even present 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”. We would suggest that a distance of 100 feet from the NTO area 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.

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 on 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 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 allow for a total of four iterations. Please provide for 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

[Signature]

Clayton E. Code
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CLFA Vice President