CALIFORNIA
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SECRETARY FOR
ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

RECEIVED BY
JUN 15 2015
BOARD OF FORESTRY AND FIRE PROTECTION

June 15, 2015

Mr. George D. Gentry
Executive Officer
Board of Forestry and Fire Protection
P. O. Box 944246
Sacramento, CA 94244-2460
George.Gentry@bof.ca.gov

Dear Mr. Gentry:

Subject: Comments on the Board of Forestry and Fire Protection proposed Working Forest Management Plan, dated May 1, 2015, Title 14 of the California Code of Regulations

File: Timber, Board of Forestry, General

Enclosed is a Memorandum dated, June 15, 2015, which provides Regional Water Board staff comments on the proposed Working Forest Management Plan, as published May 1, 2015. These comments were prepared by David Fowler, Regional Water Board staff.

We appreciate having had the opportunity to participate and to provide substantial input during the development process of this rule package to ensure actions authorized under this regulation comply with Regional Water Quality Control Board water quality requirements.

Overall we believe the proposed Working Forest Management Plan rules provide an opportunity for long term planning and management of timberlands and protection of resources. We remain concerned, however, that the proposed rule language is reactive rather than proactive with respect to the requirement addressing erosion sites. Addressing only active and existing erosion sites while ignoring potential erosion sites is inconsistent with other existing sections of the Forest Practice Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter-Cologne Water Quality Control Act.

We believe that by not addressing potential erosions sites, it is likely that the proposed WFMP regulations will not insure compliance with the North Coast water quality requirements, nor the Water Quality Control Plan for the North Coast Region. We recommend that rules be developed that are consistent with applicable water quality requirements and protection of the applicable beneficial uses of water. This approach would be consistent with the intent section of AB 904 (Public Resources Code § 4597(b)) and help our agencies and provide the people of the state with efficient government.

Again, thank you for the opportunity to review and comment. If you or your staff have any questions or concerns regarding our comments or would like additional information, please contact David Fowler (707-576-2756) or Jim Burke (707-576-2289) of our staff.

Sincerely,

Fred Blatt

Digitally signed by Fred Blatt
Date: 2015.06.15 14:02:54 -07'00'

Water Boards

Fred Blatt
Division Chief
Nonpoint Source & Surface Water Protection Division

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Enclosed: Regional Water Board staff comments June 15, 2015

cc: Board of Forestry and Fire Protection - publiccomments@BOF.ca.gov

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North Coast Regional Water Quality Control Board

RECEIVED BY
JUN 15 2015
BOARD OF FORESTRY AND FIRE PROTECTION

June 15, 2015

To: Fred Blatt
Chief, Nonpoint Source and Surface Water Protection Division

From: David Fowler
Representing review staff

Subject: Review and Comments on the Board of Forestry and Fire Protection proposed Working Forest Management Plan, dated May 1, 2015, Title 14 of the California Code of Regulations

North Coast Regional Water Quality Control Board (Regional Water Board) staff have worked cooperatively and collaboratively with members of the Board of Forestry and Fire Protection (BOF or Board), their staff, staff from the California Department of Forestry and Fire Protection, the California Department of Fish and Wildlife, the California Geological Survey, and members of the public during the development and review process of the proposed *Working Forest Management Plan* (WFMP) sections of the Forest Practice Rules (FPRs). The second Public Review draft of the WFMP rules was published on May 1, 2015 for a 45 day public comment period. Regional Water Board staff have reviewed the draft text.

Regional Water Boards regulate discharges and potential discharges of waste from timber operations by issuing Waste Discharge Requirements (WDRs) pursuant to California Water Code section 13264. Following the adoption by the Board of the proposed WFMPs rules, the Regional Water Boards will develop a permitting mechanism (i.e. WDRs or a Waiver of waste discharge requirements) for WFMPs that will include specific measures to meet water quality requirements, including Basin Plan compliance with water quality objectives and protection of beneficial uses, waste discharge prohibitions, and the total maximum daily loads (TMDLs). WDRs can rely in large part on the FPRs to ensure compliance with water quality requirements. As such, we believe that developing rules that can fully achieve water quality protection will result in the maximum benefit through increased protection of the quality of waters of the state, minimizing compliance efforts for the regulated community, and implementing efficiencies in the regulation of timber harvesting between state agencies. Incorporating the revisions to 1094.6(i), discussed below, will avoid creating a situation in which Regional Water Board permits must include

requirements for control of potential sediment discharge above and beyond that required under the FPRs.

Assembly Bill 904 created a new alternative for managing "working forest" timberlands up to 15,000 acres in size. The Bill states that "It is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving working forest management plans in advance and authorizing working forest timber harvest notices to be filed ministerially." WFMPs are intended to build on the model provided by nonindustrial timber management plans.

The proposed WFMP rules contain many commendable goals and objectives. We are concerned, however, with the proposed language of a portion of section of 1094.6(i), part of the "Contents of WFMP" (page 27, line 16 through page 28, line 2). The proposed language includes two separate "Options." The purpose of presenting two options was to allow the Board and the public to consider both proposals and then allow the Board to choose their preferred option at the June 17, 2015, adoption hearing. The proposed subsection states:

> "(j) OPTION 1: An erosion control implementation plan with information as required by 14 CCR § 923.1(e).
>
> "(j) OPTION 2: A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations shall be included in an erosion control implementation plan. This shall include disclosure of active erosion sites from logging roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The erosion control implementation plan shall also include a schedule to implement erosion controls that prioritizes significant existing erosion site(s). This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with similar requirements of other applicable provisions of law."

While Regional Water Board staff strongly support the intent of this this section, to define the contents of the erosion control implementation plan, both options are problematic.

"Option 1" simply equates the contents of an erosion control implementation plan with the requirements of 14 CCR § 923.1(e), the road inventory section of the Road Rules 2013. Regional Water Board staff oppose this option for two reasons. First, since WFMPs are not exempt from the requirements of the rest of the Forest Practice Rules, this section is redundant and adds little to the contents of the WFMP. Second, while Assembly Bill 904 specifies that an erosion control implementation plan includes consideration of "roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment," 14 CCR § 923.1(e) is restricted to roads and landings only and could omit other

significant sediment discharge sites in violation of water quality requirements . For these reasons, Regional Water Board staff oppose 1094.6(i) "Option 1."

"Option 2" is based on the language contained in Public Resources Code (PRC) § 4597.2(d). The Management Committee of the BOF spent a great deal of time discussing and considering this option and we very much appreciate the consideration given by the Committee to previous Regional Water Board comments on this section. We strongly support including a description and discussion of methods to be used to avoid significant sediment discharge in an erosion control implementation plan, but continue to be concerned that the proposed language addresses only "active" and "existing" erosion sites.

Besides being reactive rather than proactive, addressing only active and existing erosion sites is inconsistent with other existing sections of the Forest Practice Rules, sections of the recently enacted Road Rules, the requirements of the Water Quality Control Plan (Basin Plan) for the North Coast, and the Porter-Cologne Water Quality Control Act (Porter-Cologne).

WFMPs are not exempt from the requirements of the rest of the Forest Practice Rules. Section 916.4(a) [936.4(a), 956.4(a)] requires an RPF to conduct a field examination and evaluate areas near, and areas with the *potential* to directly impact, watercourses and lakes for sensitive conditions, identify those conditions, and describe measures to protect and restore to the extent feasible, the beneficial uses of water. Section 923.1(e) [943.1(e), 963.1(e)] of the new Road Rules requires road inventories. It requires an RPF to evaluate all logging roads and landings in the logging area, including appurtenant roads, for evidence of significant existing *and potential* erosion sites, and specify necessary and feasible treatments for those sites.

Additionally, WFMPs are not exempt from the requirements of the Porter-Cologne Water Quality Control Act. From the initial intent language of Assembly Bill 904, Public Resources Code § 4597(b) states:

> "(b) This article *shall be implemented in a manner that complies with* the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Division 1 of Title 5 of the Government Code), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the *Porter Cologne Water Quality Control Act* (Division 7 (commencing with Section 13000) of the Water Code), and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of the Fish and Game Code)." (emphasis added)

Both Porter-Cologne and the regional Basin Plans recognize threatened or potential discharges as well as active or existing discharges. Since the proposed language of section 1094.6(i) "Option 2" does not address threatened or potential discharges, it has not been

implemented in a manner that complies with Porter-Cologne and is therefore it is not consistent with PRC § 4597(b).

It should be noted that 1094.6(i) "Option 2" (page 27, line22 and 23) uses the term "significant sediment discharge," a term that is defined in the Forest Practice Rules definitions, section 895.1. The definition of "significant sediment discharges" includes the concept of potential as well as active discharges. Because of this, the use of the phrase "active erosion sites" in line 20 is confusing. Regional Water Board staff suggest deleting the word "active" from line 20 so that the sentence will read, "This shall include disclosure of ~~active~~ erosion sites..."

The description of the erosion control implementation plan schedule uses the undefined term "significant existing erosion site(s)" (line 25). Besides conflicting with other existing regulations and statutes, since this term is undefined, it leads to ambiguity and the inevitable question of "What is *significant*?" This could be avoided by using the existing term defined in section 895.1, "significant existing or potential erosion site."

In order to make the WFMP language internally consistent with other provisions of the Forest Practice Rules, to make it consistent with the requirements of the regional Basin Plans and the Porter-Cologne Water Quality Control Act, Regional Water Board staff suggest changing line 23 through 25 to read: "The erosion control implementation plan shall also include a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s)."

Lastly, the last sentence of section 1094.6(i) is unclear (page 27, line 25 through page 28, line 2). It was copied directly from AB 904 and the wording is somewhat convoluted. It appears the intent of this section is to allow erosion control plans developed in compliance with the requirements of other agencies to fulfill the requirements of this section. A similar allowance exists for prescribed maintenance period inspections in section 923.7 [943.7, 963.7](k)(2). In order to avoid confusion and clearly state the intent of this sentence, Regional Water Board staff suggest using section 923.7(k)(2) as a template. Regional Water Board staff suggest replacing the last sentence of proposed section 1094.6(i) with, "Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section."

In summary, Regional Water Board staff **oppose 1094.6(i) Option 1.**

Regional Water Board staff **conditionally support 1094.6(i) Option 2** with the following revisions:

> 1094.6(j) OPTION 2 "A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations shall be included in an erosion control implementation plan. This shall include disclosure

of ~~active~~ erosion sites from logging roads, skid trails, crossings, or any other structures or sites that have the potential to discharge sediment attributable to timber operations into waters of the state resulting in significant sediment discharge and violation of water quality requirements. The erosion control implementation plan shall also include a schedule to implement erosion controls that prioritizes significant existing **or potential** erosion site(s). ~~**This subdivision shall not apply to the extent that the RPF provides documentation to the Department that the WFMP is in compliance with similar requirements of other applicable provisions of law.**~~ **Erosion control implementation plans developed pursuant to California Regional Water Quality Control Board requirements may be used to satisfy the erosion control implementation plan requirements of this section**."

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