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March 2, 2015

J. Keith Gilles, Chairman
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

RE: Comments on 45-day Notice for Proposed Adoption of Regulations for the Working Forest Management Plan

Dear Chairman Gilles and Board Members:

The Environmental Protection Information Center submits these comments for consideration by the Board of Forestry and Fire Protection in its review of the proposed regulations for the “Working Forest Management Plan” documents and review process.

The Environmental Protection Information Center (“EPIC”) is a community-based, membership driven environmental non-profit organization that speaks for both its members and supporters. EPIC has established a long history of engagement in the monitoring and enforcement of laws and regulations related to private timberland management over the last 37 years. EPIC has been on the forefront of enforcing laws requiring sustainable forest practices, including its successful challenge to the Pacific Lumber/Maxxam Sustained Yield Plan. EPIC advocates on behalf of its members for sustainable forest practices to ensure protection of all natural resources, including water, protected and listed species, and cultural and historic sites. EPIC members are directly impacted by private land forest operations, particularly in terms of impacts to natural resources, water quality and quantity, ecological processes, and aesthetics. Timber operations which cause adverse environmental harm have a direct impact on EPIC members, particularly because of the loss of timberland productivity and failure to adequately protect natural resources which depend on quality timberlands. For example, EPIC members from throughout California require clean and adequate water sources, and pure air – resources which are directly affected by poorly regulated logging practices throughout California. EPIC maintains rulemaking by the Board of Forestry and Fire Protection (“Board”) must adhere to all applicable laws to ensure sustainable forestry and protection of natural resources will be an effective standard for private land timber management.

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INTRODUCTION

EPIC believes management planning is a good thing, particularly to define long-term resource planning, identify and evaluate landscape issues, provide mechanisms to remedy legacy and operational environmental impacts, and provide an ongoing feedback-loop that monitors practices and conditions to maintain ecological processes and increase productivity and sustainable forestlands while protecting natural resources.

The California Legislature passed AB 904 to provide a landscape planning mechanism for non-industrial timberland owners with ownerships of less than 15,000 acres. While EPIC did not support AB 904, now that it is law, EPIC wants to see it implemented in a manner that is effective and consistent with the Legislative intent “to encourage long-term planning, increased productivity of timberland, and the conservation of open space on a greater number of nonindustrial working forest ownerships and acreages.” (PRC § 4597(a)(3)). Thus, EPIC supports the policy to “encourage prudent and responsible forest resource management of nonindustrial timberlands” through development of good “Working Forest Management Plans.” (PRC § 4597(a)(4)). EPIC believes, as did the Legislature when it enacted AB 904, that to achieve benefits such as “added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,” the Working Forest Management Plan must “comply with *rigorous timber inventory standards* that are subject to periodic review and verification. (*Id.*, (a)(5)). (Emphasis added).

A Working Forest Management Plan (“WFMP”), by definition, is a management plan with objectives of “maintaining, restoring, or creating uneven aged managed timber stand conditions, achieving sustained yield, and promoting forestland stewardship that protects watersheds, fisheries and wildlife habitats, and other important values.” (PRC § 4597.1 (j)). Only land owners with less than 15,000 acres of timberland, and who are not primarily engaged in the manufacture of wood products, are eligible to secure approval of a WFMP. (*Id.*, (I)). These landowners must have the objective of “an uneven aged timber stand and sustained yield” which they propose to achieve through implementation of a WFMP. (PRC § 4597.2).

The Legislature directed the Board of Forestry to adopt regulations as needed to implement AB 904 provisions. (See, e.g., PRC §§ 4597.2(l), 4597.3, 4597.8, 4597.11(m), and 4597.12(b)). EPIC has previously provided comment on Board committee drafts of proposed WFMP regulations. Because we believe much of what EPIC has identified in the past remains relevant to the currently proposed regulations, we include a copy of comments from April 7, 2014 (Attachment A). One of EPIC’s primary concerns was the Board’s failure in previous draft to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. EPIC strongly disagrees with this approach, as we believe AB 904 requires interpretation and guidance for effective implementation. EPIC identified many examples of this and refer the reader to our earlier comments. The Board’s Initial Statement of Reasons (“ISOR”) now tries to justify this practice under a theory that “duplication of statute” was necessary for “consistency” and “to satisfy the clarity standard.” (ISOR, at p. 7). EPIC disagrees. Because the draft regulations now duplicate language, or in some cases introduce new language which further confuses the statutory standards, many of the regulations do not satisfy the Administrative Procedures Act standards for clarity and consistency.

Underlying this regulatory effort is the reality that several hundred thousand acres of forest land may be eligible for and receive Working Forest Management Plan approval. As lifetime plans, it is critical that the Legislative intent be fully and accurately implemented in a manner that protects timberland and other natural resources. The regulations as drafted do not provide the basic information required by, or offer interpretation of, governing statutes in a manner that will achieve the California's stated goals and objectives in authorizing WFMPs.

These comments focus on core issues which must be addressed through changes in the proposed regulations, before the Board may act to approve a set of regulations for the WFMP. The regulations fail to satisfy the statutory duty embodied by AB 904. They lack necessary definitions. They fail to require content to ensure that long term sustained yield ("LTSY") is plainly stated, and achieved through implementation of unevenaged management and monitoring. The regulations fail to provide adequate measures to protect water quality, protected and listed species, and cultural and historic sites. They fail to ensure that cumulative impacts are properly evaluated and mitigated. The regulations fail to meet governing statutory requirements by permitting exceptions to standard rule provisions, and authorizing stocking standards which do not achieve increased timberland productivity. The regulations also fail to meet the statutory requirement for a Five Year Review process. Because of these failures, the Board's proposed rules do not satisfy CEQA requirements.

EPIC requests that the Board consider and respond in writing to all comments presented, evidence submitted, and the suggestions made.

I. LEGAL FRAMEWORK

Rulemaking is subject to the requirements of the California Administrative Procedure Act ("APA"). To be effective, a regulation must be consistent and not in conflict with the governing statute, and must be reasonable necessary to effectuate the purpose of the statute. (Gov't Code § 11342.2). To be approved by the Office of Administrative Law, the regulations must satisfy these criteria: necessity, authority, clarity, consistency, reference and nonduplication. (Gov't Code § 11349.1). "Necessity" means to effectuate the purpose of the governing statute, taking into account the totality of the record before the agency at the time of approval. (Gov't Code § 11349 (a)). "Clarity" means the regulation must be "easily understood" by those who are directly affected by them; "consistency" means "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions or other provisions of law." (*Id.*, subd. (c) and (d)). A notice of proposed rulemaking must include discussion of "matters required by statute(s) applicable to the specific state agency or to any specific regulation or class of regulations." (Gov't Code § 11345.5 (a)(4)).

This means the Board's rulemaking must meet the standards of the Forest Practice Act, including AB 904, the legislative bill which enacted the Working Forest Management Plan provisions codified in the Forest Practice Act as Public Resources Code sections 4597 - 4597.22. Thus, rules must satisfy the Forest Practice Act goal of maximum sustained production of *high quality timber products* while protecting natural resources and other values. (PRC § 4513, emphasis added). And rules must comply with AB 904's intent, which requires a Working Forest Management Plan to "comply with rigorous inventory standards" intended to "ensure long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, aesthetics, and the maintenance of ecosystems processes and services." (PRC § 4597 (a)(5)).

One of the others laws which the Board must follow in the review and approval of regulations is the California Environmental Quality Act (“CEQA”). Pursuant to CEQA, the Secretary of Resources has certified the rulemaking process by the Board as a "regulatory program" within the meaning of Public Resources Code section 21080.5. Section 21080.5 of CEQA provides a mechanism for the use of an environmental review document “in lieu of the environmental impact report.” In adopting regulations, the Board must comply with all requirements of CEQA except those provisions of Chapters 3 and 4 of CEQA (commencing with sections 21100 and 21150), and Public Resources Code section 21167. The Board must also comply with its certified program, consisting of its legislative mandates and regulations. A certified program remains subject to other provisions in CEQA, including the policy of avoiding significant adverse effects on the environment, (14 CCR § 15250), and adequate evaluation and mitigation of cumulative impacts. (*EPIC v. Johnson* (1985) 170 Cal.App.3d 604).

The CEQA certification statute specifies the minimum requirements for Board regulations. These include requirements that the rules ensure that projects approved pursuant to Board rules (1) will not be approved if there are feasible alternatives or feasible mitigation measures available that could substantially lessen a significant adverse effect of the activity on the environment; and (2) are subject to and include orderly evaluation and which requires the plan document to be consistent with the environmental protection purposes of the FPA. (PRC § 21080.5(d)(2)(A), (B)). The CEQA certification also requires that the plan that is subject to the rules, such as the Working Forest Management Plan, must include a “description of the proposed activity with alternative to the activity, and mitigation measures to minimize any significant adverse effect on the environment from the activity.” (PRC § 21080.5(d)(3)(A)). CEQA requires that any project be evaluated for the potential for, and avoidance at time of approval of, significant and cumulative adverse impacts upon the environment. (PRC §§ 21000, 21001, 21003.1, 21080.5(d)(3)(A)).

This means the Board must comply with its own rulemaking regulations, as well as Public Resources Code section 21080.5 (d). Among other things, these provisions require the Board to evaluate and mitigate possible significant adverse environmental effects, and propose reasonable alternatives to rule proposals. (14 CCR § 1142). The Board must also evaluate during its process how well the proposed rules would serve the policies of the Forest Practice Act (“FPA”), eliminate any avoidable environmental damage, serve the production of high quality timber while maintaining the productivity of all affected resources, and how the rule proposal could be modified to more effectively accomplish the purposes of the Forest Practice Act. (14 CCR § 1144).

In summary, the proposed regulations fail to provide for adequate standards to address significant adverse individual cumulative impacts on the environment, fail to provide standards for mitigation and/or minimization of significant adverse individual or cumulative impacts, and fail to identify or describe reasonable alternatives to the proposed regulations that could potentially minimize or mitigate to insignificance any potential significant adverse individual or cumulative impacts to the environment.

EPIC contends that the Board has failed to satisfy these requirements, as discussed below.

II. THE REGULATIONS FAIL TO SATISFY THE INTENT OF THE STATUTE

A. The Regulations Fail to Provide Essential Standards.

AB 904 expressly declares that the “working forest management plan shall comply with rigorous timber inventory standards.” (PRC § 4597(a)(5)). These standards are needed to ensure the long-term benefits outlined in the statute, including “added carbon sequestration,” “sustainable production of timber and other forest products,” and “the maintenance of ecosystems processes and services.” Yet, the proposed regulations fail to identify any “rigorous timber inventory standards.” In fact, the proposed regulations do not provide any clearly stated timber inventory standards. While proposed rule 1094.6 requires “description” of “inventory design and standards,” including types of projections or models used to make projections of growth and yield, (subsection (f)), or “inventory design and timber stratification criteria” to support growth and yield calculations used to determine LTSY, (subsection (g)), these provisions do not provide any actual standard, much less a “rigorous” timber inventory standard, that must be satisfied. In fact, in doing a search of the entire proposed rule package, there is not one reference to “inventory standard,” or “timber inventory.” Thus, the rules fails to meet the required APA standards, and in the absence of clear statement of the required “rigorous inventory standards,” there is a serious question as to whether these rules, as currently drafted, can even satisfy the APA authority, necessity and consistency standards.

The proposed rules also fail to provide clear definitions for the “long-term benefits” the rigorous timber inventory standards are intended to ensure. For example, the proposed rule package fails to define or give interpretation to the terms such as “added carbon sequestration,” “sustained production of timber and other forest products,” or “maintenance of ecosystems processes and services.” (PRC §4597(a)(5)). This failure contributes to the legal deficiency of the rule package, by not providing necessary interpretation of core statutory provisions.

Proposed rule 1094.6 states that a “function” of the WFMP is to “provide information and direction for timber management so it complies with*management objectives of the landowner(s).*” (Emphasis added). AB 904 says nothing about landowner management objectives. Introducing this provision to guide the WFMP, while failing to provide the statutory “rigorous timber inventory standards,” or definition of stated objectives, is contrary to the statute and not authorized. As such, it violates the APA. Moreover, the proposed regulations place no definition on what may constitute landowner’s “management objectives.” There is nothing “rigorous” about allowing a landowner’s unbridled management objectives to define timber management as contemplated by AB 904. This too violates the APA due to a lack of authority and consistency.

The proposed rules, and specifically rule 1094.6, do not require an express statement and identification of “long term sustained yield.” While there are provisions that require submission of information as to how the plan submitter estimates LTSY, there is no plain requirement for the WFMP submitter to *state* the LTSY. Nor is there any provision which stipulates that the WFMP submitter must conduct uneven aged management to reach LTSY, or to maintain LTSY. The ISOR advises that this rule package is intended to “incentivize” uneven aged management (ISOR at p. 4), yet the rules themselves do not provide any clear incentive much less a requirement to conduct uneven aged management over time, into the future, or upon realization of the (unstated) LTSY. This is yet another reason why the proposed rules are not authorized by statute, and do not satisfy the intent and purpose of AB 904, e.g., to provide “increased productivity of

timberland” and achieve the long-term objective of an “uneven aged timber stand and sustained yield through implementation of a working forest management plan.” (PRC §§ 4597(a)(3), 4597.2).

Additionally, the rules lack any metric to evaluate, consistently over time, whether statutory goals for “sustained production of timber” and “sustained yield” are being achieved. (PRC §§ 4597, 4597.2). Specifically, the rules fail to require regular and ongoing reporting of volume harvested and volume remaining, for at least tree size, species, and stands. In order to achieve sustainability, the volume removed—such as Scribner volume, cubic or board feet – must be recorded to determine whether estimates for removal are being followed. It is also necessary to provide regular reporting of emerging growth, in order to evaluate whether growth projections for the LTSY are accurate or need adjustment. This is needed entirely independent of any Five Year Review for compliance; it is needed to ensure that the purposes of the WFMP are being fulfilled over time.

The failure to provide these key provisions in the proposed rules mean that not only has the APA not been followed, but equally CEQA requirements have not been met. The ISOR summarily concludes that the proposed rule package will not result in significant adverse environmental effects. (ISOR at p. 106). This is insufficient based on the potential for real harm due to the lack of “rigorous timber inventory standards,” clear statement of LTSY, measures to ensure use of uneven aged management over time, and adequate recording and monitoring of volumes harvested and growth occurring. The lack of these measures means, simply, that WFMPs and their implementation, have the very real potential to cause significant adverse effects on the environment, and particularly timberland productivity and inventories over time, which in turn can adversely impact many natural resources.

The proposed rules and the ISOR do not appear to encompass real consideration of baseline conditions with regard to the status and plight of threatened and endangered species, nor do the proposed rules or the ISOR adequately address how forest management under the guise of a WFMP may affect these conditions and trends. There is an inherent presumption that the proposed rules will not have a significant adverse impact on the environment (*See* ISOR at p. 106). Furthermore, as described in more detail below, the proposed rules do not contain adequate standards or safeguards regarding the identification and protection of threatened or endangered species within the WFMP assessment area.

There are numerous examples of forest-associated species that are currently listed as threatened or endangered and that are well-known to be in decline based on the best available science and research that may be adversely affected by the lack of adequate standards and mitigations in the proposed rules.

One well-known species that is experiencing well-documented declines in vital demographic statistics is the Northern Spotted Owl (“NSO”). The latest range-wide demographic study for the NSO (Forsman et al. 2011) (Attachment B), documents declines in reproduction, apparent survival, and overall populations in most study areas. Forsman et al. (2011) concludes that past and ongoing habitat loss, combined with increased competition from non-native invasive barred owls are partially responsible for these declines. (Forsman et al. 2011; Abstract).

Anadromous salmonid species in California, particularly in coastal watersheds, are similarly in peril. For example, the National Marine Fisheries Service’s (“NMFS”) Final Recovery Plan for

the Southern Oregon/Northern California (“SONCC”) Evolutionary Significant Unit (“ESU”) of Coho salmon (National Marine Fisheries Service 2014) (Attachment C) notes that literally thousands of Coho once returned to Northern California and Southern Oregon rivers and streams, but that today, over three quarters of SONCC Coho salmon independent populations are at high risk of extinction. (NMFS 2014, at p. E-2). The 2014 SONCC Coho recovery plan includes an assessment of the 2010 Anadromous Salmonid Protection Rules (“ASP”) which currently regulate timber harvest activities on private ownerships within the range of the SONCC Coho. NMFS staff actively engaged and participated in BOF meetings and expressed concern to the BOF that the ASP rules, while resulting in some improvements to riparian protections, would not adequately protect anadromous salmonids until several inadequacies in the Forest Practice Rules were addressed (NMFS 2009). NMFS identified several weaknesses in the existing ASP rules, including the failure to address rate-of-harvest. The NMFS Final Recovery Plan for the SONCC Coho states:

In addition, NMFS believes the use of scientific guidance will provide additional limitations on the rate of timber harvest in watersheds to avoid cumulative impacts of multiple harvests, and provide greater protections to ensure the integrity of high gradient slopes and unstable areas. This may include limiting the areal extent of harvest in such areas. (NMFS 2014, at p. 3-55).

While the Board of Forestry continues to fumble around with its feeble attempts to tweak the language contained in Technical Rule Addendum No. 2 (cumulative impacts assessment), the Board is missing the larger picture related to the causes of, and the need to further regulate, the cumulative impacts of timber harvest activities on properly functioning habitat conditions for Coho and other listed salmonids.

More recently, another forest-associated species has been proposed for listing under the federal Endangered Species Act (“ESA”) by the U.S. Fish and Wildlife Service (“USFWS”). The USFWS has proposed listing of the Pacific Fisher as a “threatened” species under the ESA. In its 2014 Species Assessment Report for the Pacific Fisher, the USFWS cites large-scale loss of important habitat components for the fisher due to past ‘vegetation management’ and timber harvest, and current ‘vegetation management’ activities. (USFWS 2014 at p. 55). (Attachment D).

Finally, past and contemporary forest management have had a devastating impact on the federal-threatened and state-endangered Marbled Murrelet. Raphael et al. (2011) in Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the Marbled Murrelet (Attachment E) estimated a loss of about 13 percent of the higher suitability habitat present at baseline, (1994—Advent of Northwest Forest Plan) over this same period. Fire has been the major cause of loss of nesting habitat on federal lands since the Plan was implemented; timber harvest is the primary cause of loss on non-federal lands. (Raphael et al. 2011 at Abstract). The Marbled Murrelet is well-known to primarily rely on old growth and late successional forest types for its survival. Raphael et al. (2011) shows that habitat for the Marbled Murrelet continues to decline, and that this species continues to be in great peril.

Neither the proposed rules themselves, nor the ISOR describing the rules appear to consider the potentially significant adverse individual or cumulative effects of forest management activities to be permitted under the WFMP regulations on these species, and fail to describe reasonable alternatives that would minimize or substantially lessen such impacts in violation of CEQA.

EPIC proposes that the Board return to the committee to draft regulations which include provisions needed, as outlined herein.

B. The Proposed Regulations Fail to Define Several Terms Which Require Definition.

The proposed regulations lack clarity and consistency because of the failure to define essential terms. These include those terms identified above – added carbon sequestration, sustainable production of timber and other forest products, maintenance of ecosystem processes and services, and rigorous timber inventory standards. (PRC § 4597(a)).

In addition, there are terms used in the proposed rules which have not been defined, and are not clear in their use. These include:

- “forestland stewardship” (1094.3);
- “management objectives of the landowner(s)” (1094.6);
- “baseline conditions” (1094.6(f)(1));
- “timber volume” (1094.6(g));
- “similar requirements” (1094.6(i));
- “LTSY plan” (1094.6 (m)(1));
- “address” (1094.6(n));
- “necessary deviation” (1094.8);
- “physical environmental changes” (1094.8(h));
- “significant changes” (1094.16(d)(1)); and
- “proprietary information” (1094.29(e)).

All of these terms require definition in order to understand their specific meaning, as well as the rule or rule provision which uses these terms. Without definition, the rules which use these terms do not satisfy the APA standard of clarity. Moreover, as ambiguous terms, they may not protect the environment, because to the extent any one or all of them are intended to act as a requirement, that requirement cannot be satisfied without a definition. Thus, the lack of definition contributes to the failure to adequately evaluate potential significant adverse environmental effects, define mitigation, and evaluate feasible alternatives – all in violation of CEQA.

III. THE REGULATIONS VIOLATE APA STANDARDS AND CEQA.

The following are comments on specific provisions of the rules which EPIC believes illustrate the lack of APA and CEQA compliance. Here EPIC focuses on what it believes are key substantive provisions which must be changed and amended before they can be adopted.

A. The Proposed Rule Specifying WFMP Content Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

In reviewing the proposed WFMP content rule, 1094.6, EPIC identified six substantive areas which we believe require changes in order to satisfy the APA and CEQA standards articulated above. These are: (1) LTSY, (2) water quality, (3) wildlife and protected species, (4) cultural and

historic sites, (5) cumulative impacts analysis, and (6) use of exceptions to standard rule requirements. For all of the provisions identified below, the ISOR failed to provide a reasonable and adequate discussion of potential significant adverse impacts, or necessary mitigation, or considered alternatives that could have eliminated or substantially reduced these potential effects, in violation of CEQA.

1. Long Term Sustained Yield

To begin, EPIC reiterates that a major flaw in the proposed rules is the failure to require an express statement of long term sustained yield. This is compounded by the failure to require an express statement to show how uneven aged management over time will be used and implemented. In addition, the following subsections are insufficient and require changes, as recommended here.

Subsection (f) requires a description of the “planning horizon associated with the estimate of LTSY,” and “the period of time necessary to estimate achievement of LTSY.” As worded, neither of these provisions are clear as to what is meant by the “estimate” for “achievement” of LTSY. Does determination of LTSY depend on merely an estimate, unknown at the time of WFMP approval? If that is so, the regulations need to identify the controls in place to ensure the WFMP objectives toward sustainability and uneven aged management will be achieved. We could find no requirement that the WFMP plainly state the time needed to achieve actual LTSY. This subsection must be clarified to have meaning, and provide better standards to specify LTSY. In the absence of controls, this provision leaves room for unrealistic estimates for achievement of LTSY, and does not provide for increased productivity of timberlands, or protection of resources – in violation of the APA. And the ISOR fails to evaluate the potential for significant adverse impacts to resources from the lack of definition and controls.

Subsection (g) requires a description of inventory design and timber stand stratification criteria which show that the projected inventory supports the growth and yield calculations used to determine LTSY “by volume.” “Volume” is never defined, so there is no clarity to the term “LTSY by volume.” Volume can be Scribner volume, board foot or cubic volume, or basal area volume. This must be clarified to provide uniformity in determining LTSY. Subsection (g) also provides three “minimum standards” which must be satisfied in the required description of inventory criteria. While (1) and (2) appear relatively straightforward, subsection (3) introduces further ambiguity, as it requires projections of LTSY “and volumes available for harvest,” without defining what kind of volume (e.g., Scribner, board or cubic foot, or basal area) is being projected. It also provides that the projections for LTSY and volumes available for harvest by Stand or Strata shall be “aggregated for the area covered by the WFMP to develop the LTSY estimate.” This is unclear. Stands grow at different rates, density, with different competition and site qualities. All may be different from one stand to the next, from one strata to the next, all within the area covered by one WFMP. “Aggregating” does not take these differences into account and may result in skewed LTSY projections. This could result in failing to meet the statutory WFMP objectives, accompanied by adverse environmental impacts on resources such as timber, water quality, and protected species. Yet potential impacts of this language have not been analyzed are required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources.

Subsection (h) lacks clarity because, while it requires a description of the property and planned activities, it does not provide a time frame for those projections. Thus, for example, while

requiring information about the “projected timber volumes and tree sizes to be available for harvest,” there is no requirement to identify the time frame for these expected harvest potentials. Is this on an annual basis? For how many years? This is necessary information to understand the accuracy and effectiveness of projected LTSY. Subsection (h) does not define a time frame for projected volumes and tree sizes. The WFMP is permitted to extend into perpetuity; if perpetuity is the time frame then a statement that identifies reliable projected volumes into perpetuity is required. To be clear and consistent with the objectives of the statute, a defined metric should be articulated to monitor the volume and tree size projections over time. If projections into perpetuity are not the metric, then a realistic time frame must be established, at the end of which the WFMP must be reviewed for conformance to the projections.

Subsection (h) also places no limits on the type of silvicultural method to be applied, even though the statute is clear that the WFMP is intended to achieve “uneven aged timber stand and sustained yield.” PRC § 4597.2. Indeed, nowhere do the regulations actually limit or restrict silvicultural methods to uneven-aged management. This is contrary to the plain language of the statute to achieve uneven aged management.

Subsection (m) requires information for management units, including identification of the acres and estimated growth and yield for each planned harvest entry covering the period of time necessary to meet growth and yield objectives. The regulations do not require the WFMP to plainly state the period of time necessary to achieve growth and yield. This can have adverse environmental impacts because the WFMP is a perpetual plan, and without required time frames, adherence to the policies to ensure protection of the environment, such as sustained production of timber and other forest resources, may be forestalled.

To further illustrate the lack of clarity for LTSY, subsection (p) requires the WFMP to describe “a future schedule of inventory sampling and analysis of LTSY.” We interpret this provision to provide some kind of monitoring measure to evaluate the LTSY projections as the WFMP is implemented. However, there is no requirement here, or elsewhere, that specifies the *time frame* for such a schedule of inventory sampling and analysis of LTSY. In the absence of any meaningful time frame, this measure fails to provide the necessary structure to ensure that LTSY and sustained yield is being achieved. Moreover, there is no provision here or elsewhere which requires disclosure of volumes actually harvested, as opposed to “projections” of yield. This information is necessary to ensure that LTSY - and thus the WFMP objective for sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

2. Water Quality Protection

Subsection (h) fails to require information about *potential* erosion sites, even though such disclosure and analysis should be readily available upon an adequate field inspection. This failure leaves the proposed rules in direct conflict with requirements of the recently-adopted “Road Rules” package. This oversight raises the potential for significant adverse environmental effects from this regulation which has not been evaluated in the ISOR as required.

Subsection (h) authorizes reliance on so-called “similar requirements of other applicable provisions of law” in lieu of providing the required description of methods used to avoid significant sediment discharge to watercourses. However, in the absence of a definition for

“similar requirements,” this exemption renders the provision unclear and ambiguous, and may result in significant adverse impacts to the environment which are not analyzed in the ISOR.

3. Protection of Wildlife and Other Vulnerable Listed Species

Subsection (l) requires disclosure only of “known locations” of listed or protected plant and animal species and their key habitats. This is insufficient, and fails to meet the statutory objective to maintain ecosystem processes (PRC § 4597(a)(5)), and protect fisheries and wildlife habitats (PRC § 4597.1(j)). There is no requirement to conduct an investigation or protocol surveys to determine the *presence* of protected and listed species or their habitat. This is an omission that must be corrected to ensure that the WFMP satisfies the legislative intent and does not cause adverse impacts to protected and listed species.

Subsection (n) provides standards for LTSY projections which project a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata. In those circumstances, the WFMP must provide an “assessment” which “addresses” listed and protected species and their habitat needs. It is entirely unclear what it means to “address” these resources. If the intent is to ensure that these vulnerable species are protected when tree size and quantity are significantly reduced, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species subsection (l), merely “addressing” these vulnerable species is not sufficient. Absent some standard to credibly evaluate potential impacts from reduced tree and stand size, this provision poses threats to protected and listed species and their habitat needs which constitutes a potential significant environmental effect which has not been analyzed or mitigated as required by CEQA and Board rules.

As described above, both past and contemporary forest management are important factors contributing to the decline of many threatened and endangered fish and wildlife species. The lack of clarity and adequate standards in the proposed rules has the potential to result in significant adverse individual and cumulative effects to these species and their habitats. The proposed rules and the ISOR describing the rules fail to provide a mechanism for analysis of, disclosure of, and mitigation to insignificance of potentially significant adverse impacts to threatened and endangered species and thus violate CEQA.

4. Failure to Ensure Protection of Archeological, Cultural, and Historic Sites

Subsection (q) suffers from the same inadequacy as for protected species. By only requiring description of “known” cultural or historical resources, the WFMP fails to ensure protection for these resources. Surveys and field investigations should be required.

5. Lack of Cumulative Impacts Analysis in WFMP

Subsection (w) is confusing because it simply requires the WFMP to include a “description of the cumulative impacts analysis.” The WFMP must provide a cumulative impacts assessment pursuant to Technical Rule Addendum No. 2. (14 CCR § 898; 14 CCR 912.9). Yet the proposed subsection permits the WFMP to include only a description of that analysis. The full analysis as required by the Forest Practice Rules and CEQA must be included in the WFMP, and any requirement less than that violates the Forest Practice Act and CEQA.

6. Allowance for Exceptions to Standard Requirements Places Resources at Risk

Subsections (y) through (z), (bb) through (ee), and (ii) are provisions to authorize exceptions to standard FPA rule provisions in certain circumstances. These subsections are unclear as to whether they are intended to apply to the entire area covered by the WFMP, identified Management Units, or only to specified location stated in the WFMP. Such exceptions appear contrary to the Legislative intent and purpose of the WFMP; authorizing the WFMP to utilize exceptions and alternative practices for all time poses a real – and unanalyzed – threat to the environment. Moreover, permitting exceptions for all time is contrary to the Legislative intent to encourage prudent and responsible forest management – with increased productivity of timberland. (PRC § 4597(a)(1), (3), (5)).

These subsections are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated pursuant to CEQA. They pose the risk, over time, of causing significant adverse environmental effects. These exceptions, for example, if they are to be allowed as permanent standards, must be assessed in the context of the best science detailing what our forests can expect in 10, 20, 30 and 50 years from now due to climate change and other conditions.

Subsection (ii) authorizes certain exceptions, for tractor operations on steep and unstable slopes and lands, roads and skid trails to be located in watercourse zones, to be approved as “standard operating practices.” This standardized ‘permission’ has not been properly analyzed under CEQA for the potential for significant impacts. It permits use of an undefined “deviation,” with alternative mitigation to be incorporated into the WFMP—without any mention of public review and comment. Mitigation is required to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This provision ignores that requirement, and its process is contrary to the APA and CEQA.

B. The Proposed Rule for WFMP Annual Notice Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The WFMP is to be implemented through submission of an annual notice, which permits operations immediately upon submission. (PRC § 4597.11; proposed rule 1094.8.) Like the WFMP, it must be a public record. As identified above, terms in the provisions for the WFMP Notice are not defined. The proposed annual Notice requirement also does not require information to document what has already occurred to implement the WFMP or to identify new conditions or potential impacts. In this way, the Notice does not provide a clear statement of the information needed to ensure that the Legislative intent to encourage increased productivity of timberlands (PRC § 4597(a)(3)), and to establish uneven aged management and sustained yield through the implementation of the WFMP. (PRC § 4597.2).

At the outset, the proposed Notice rule directs that “[a]ll necessary deviations shall be approved by the Director prior to submission” of the Notice. The proposed rule does not define what constitutes a “necessary” deviation, and whether a “necessary” deviation is a substantial, minor or some other kind of deviation. The proposed rule also does not define who decides what a

necessary deviation is or what process the Director must use to approve a “necessary” deviation. This provision lacks clarity.

The proposed Notice provisions suffer from many of the same defects as in the proposed WFMP content rule. For LTSY and sustained yield, the proposed Notice rule lacks any disclosure of volumes and tree sizes available for harvest. This information is necessary to document what has occurred, and what timber operations have been or are proposed to be conducted to achieve the long-term objective of uneven aged management and LTSY. The WFMP requires a one-time description of projected timber volumes and tree sizes to be available for harvest and frequencies of harvest. (PRC § 4597.6(h)). The annual Notice, to be meaningful, needs to provide an annual record toward and update to those projections, to evaluate WFMP compliance. While subsection (l) requires a statement that the Notice conforms to the provisions of the WFMP, it does not require data to support this conclusion. That statement must be based upon actual substantial evidence. At a minimum, the Notice should include a statement identifying what volumes and tree sizes are available for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

For wildlife and protected species, subsection (g) requires only review of public sources and databases to report whether there are any “known” occurrences of these species. While this subsection does refer to a species which has or has not been “discovered” there is no affirmative duty to conduct a protocol survey or other investigation to look for these protected species. This is necessary to fulfill the legislative intent to promote forestland stewardship which protects fisheries and wildlife habitats. (PRC § 4597.1(j)).

Similarly, subsection (f) permits a statement that no archaeological sites have been discovered, without a corresponding duty to conduct some kind of survey to determine if such sites do exist.

Subsection (h) requires a statement, based on a field evaluation, that “there are no physical environmental changes” in the Notice area “that are so significant as to require any deviation of the WFMP.” The proposed rule do not define what is meant by “physical environmental changes” and what that term may encompass. The lack of definition makes this subsection confusing and without clarity, as no thresholds are provided. The provision is also unclear because earlier in the proposed rule it is clear that there can be no outstanding “necessary deviations” once the Notice is submitted. Whether “necessary deviations” means the same as or something different from “physical environmental changes” is not known, adding to the confusion. Since the submission of the Notice permits operations to commence immediately, in the absence of clear standards or thresholds, there is no ability to evaluate whether the statement is accurate. As with other provisions, evidence must be provided which documents that a field evaluation was conducted of the entire area covered by the Notice, and documents the conditions observed during the field evaluation.

For water quality protection, subsection (m) is good because it, unlike so much else, requires an “updated” erosion control implementation plan. However, it too does not require any actual evidence upon which conclusions as to *current* conditions are based. The mapping requirement under subsection (s)(10) perpetuates the deficiency in the WFMP - to require mapping only of “known” unstable areas or slides, rather than also documenting locations which are potentially unstable or at risk. This must be expanded to require identification of “potential” unstable areas.

Subsection (r) requires description of the WFMP exceptions which have “standard operating practices,” without requiring evidence or data that documents the continued justification for such exceptions. The Notice rule should include a requirement for some evidence to justify the continued need for the exceptions.

The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area. As a result, it is unclear to what extent more than one, or several, areas within the WFMP may be under operation in any given year. This poses the potential for significant cumulative impacts which would need to be evaluated, yet there is no requirement for the disclosure or evaluation of multiple operations.

C. The Proposed Rule For Substantial Deviations Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.23 outlines the circumstances under which a change to the WFMP shall be deemed a “substantial deviation.” Subsection (c) provides examples of such deviations, including “[c]hange in location of timber harvesting operations or enlargement of the area or *volume planned to be cut*.” (Emphasis added). However, no threshold for a change in the “volume planned to be cut” is included. A threshold must be established, such as the 10% standard used for a Sustained Yield Plan in section 1091.13(a).

In addition, this subsection also reveals the lack of an effective annual monitoring component that documents the volume cut in any given year. This reporting is necessary to keep track of what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY.

D. The Proposed Rule for Stocking Standards Fails to Meet the Intent of the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

The Legislature authorized the WFMP as a tool to achieve “increased productivity of timberland.” (PRC § 4597(a)(3)). Proposed rule 1094.27 (a) is inconsistent with this intent because it permits stocking to be satisfied using minimum stocking standards, rather than require an increase in productivity over time. To “increase productivity” means to require a standard higher than just “maintaining” minimum stocking standards, which is what subsection (a) authorizes. This is not authorized by the WFMP statutes, and was not analyzed in the ISOR for its potential to cause significant adverse environmental impact to the environment. This will not “benefit” the environment, and as the potential to degrade the environment by not doing as contemplated by the Legislature – to increase timberland productivity and utilized uneven aged management.

E. The Proposed Rules for the Five Year Review is Inconsistent with the Statute and Is Not Readily Clear, Defined, or Analyzed as Required by CEQA.

Proposed rule 1094.29 sets forth provisions for what is called a “Five (5) Year Review of the WFMP” (“5-Year Review”). This section is not clear, particularly as to the contents of the summary and 5-Year Review. The Legislature directed the board to adopt regulations for this specific section, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.

First, the proposed rule is not consistent with the statute, Public Resources Code section 4597.12. By statute, the Department is to first develop a summary, and then conduct the 5-Year Review. (PRC § 4597.12(b) [“develop a plan summary *before each five-year review*”]). (Emphasis Added). Proposed rule 1094.29 (a) and (b) make a mishmash of this clear process, obfuscating when the summary is done in relation to the 5-Year Review.

Second, the proposed rule fails to be clear as to the public’s right of review. The statute provides that the public shall have a right to review the summary and provide comment for the 5-Year Review. (PRC § 4597.12(c)). However, joining in subsection (b) the “summary” and development of the 5-Year Review, the proposed rules deprive the public of its 30-day right of review as contemplated in subsection (a). The public must be given an adequate period of review for the summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. And, the public should be given a right to comment upon whatever document encompasses the 5-Year Review.

Third, the rules are not clear as to what is to be included in the “summary” preceding the 5-Year Review, or what shall be included in the 5-Year Review. If the summary is the document from which the 5-Year Review is to be conducted, a clear statement is necessary in order for the public to exercise its role to present “additional information relevant to the purpose of the five (5) year review,” as stated in subsection (a). And the required contents for a 5-Year Review must be delineated.

It is unclear whether a 5-Year Review will include the information outlined in subsections (b) or (c) , i.e., number of WFMP Notices, the acreage operated under each WFMP Notice, the violations received, the volume harvested in relation to projections of harvest in the WFMP. The only information that the review team is actually required to analyze is “significant episodic events occurring during the previous 5 years.” (1094.29(c)). The proposed rule needs to be clear as to what is to be included in the 5-Year Review and whether it is only a “summary” or something more. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review.

Subsection (d) provides three distinct and valid reasons why the Department “shall provide written comments that a review of the WFMP content and procedures may be necessary”: (1) notices of violation have been issued; (2) the 5-Year Review indicates potentially significant adverse impacts to the environment may occur from continuance of the WFMP; or (3) the Department is presented with a fair argument that a project may have a significant adverse impact on the environment. However, the subsection provides no standards or process for the “review of the WFMP content and procedures.” These are required, to make the proposed rule meaningful and clear. It is unclear if this subsection is referring to the “5-Year Review,” or something else. The proposed rule is also not clear as what process the Department uses to “confer” with the Designated Agent. This provision must be clarified, and the process must be transparent and subject to public review.

Subsection (e) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP “shall be a public record.”(PRC § 4597.2; proposed rule 1094.3). That means all the information identified in proposed rule 1094.6 is a public record. Similarly, the WFMP Notice is a public record. (PRC § 4597.11, proposed rule 1094.8). The 5-Year Review is based upon a

review of this public information. Subsection (e) authorizes a WFMP landowner to prevent public disclosure of “proprietary information.” Permitting a landowner to not disclose *undefined* information, which is completely relevant to a determination of WFMP compliance, is contrary to the fundamental premise of the Forest Practice Act and CEQA to require public access and review.

CONCLUSION

The proposed WFMP rules are inconsistent with the enacting statute by failing to provide “rigorous timber inventory standards,” and fail to comply with basic CEQA and APA requirements. The proposed rules are inadequate to ensure LTSY, and are inadequate to provide for wildlife and water quality protection and enhancement. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to address the deficiencies identified.

EPIC appreciates the opportunity to provide these comments, and requests a written response. Please do not hesitate to contact me at the number provided below should there be questions.

Sincerely,



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Enc. – See Attachments List

Attachments

Attachment A: EPIC Letter regarding WFMP Draft Regulations to Management Committee. April 7, 2014.

Attachment B: Forsman, E.D., R.G. Anthony, K.M. Dugger, E.M. Glenn, A.B. Franklin, G.C. White, C.J. Schwarz, K.P. Burnham, D.R. Anderson, J.D. Nichols, J.E. Hines, J.B. Lint, R.J. Davis, S.H. Ackers, L.S. Andrews, B.L. Biswell, P.C. Carlson, L.V. Diller, S.A. Gremel, D.R. Herter, J.M. Higley, R.B. Horn, J.A. Reid, J. Rockweit, J. Schaberel, T.J. Snetsinger, and S.G. Sovern. 2011. Population Demography of the northern spotted owls: 1985-2008. *Studies in Avian Biology*.

Attachment C: National Marine Fisheries Service. 2014. Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service. Arcata, CA.

Attachment D: U.S. Fish and Wildlife Service, 2014b. Draft Species Report Fisher (*Pekania pennanti*), West Coast Population. January 13, 2014.

Attachment E: Raphael, Martin G.; Falxa, Gary A.; Dugger, Katie M.; Galleher, Beth M.; Lynch, Deanna; Miller, Sherri L.; Nelson, S. Kim; Young, Richard D. 2011. Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet. Gen. Tech. Rep. PNW-GTR-848. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station. 52 p.