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March 24, 2016

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

**RE: EPIC and Coast Action Group Comments Regarding March 2016 Version of Rulemaking Pleading for the Working Forest Management Plan**

Dear Chairmen Gilles and Board Members:

The Environmental Protection Information Center (EPIC) and Coast Action Group (CAG) submit the following comments regarding the March 2016 version of the pleading for rulemaking to implement the provisions of Assembly Bill 904, "Working Forest Management Plan" (WFMP), and provide these comments for discussion at the March 24, 2016 scheduled Redding Workshop on the proposed WFMP regulations.

Herein, we will again summarize the specific and substantive flaws that continue to plague the WFMP rulemaking proposals developed and brought forth by the Board of Forestry and its staff thus far. Fundamentally, we contend that the WFMP regulatory pleadings heretofore developed and proposed by the Board and its staff fail to meet the letter and intent of the authorizing statute, and fail to comply with critical elements of other applicable laws, not to mention some of the basic principles of forestry as an art and science. It is hoped that by presenting these concerns, again, in one place, at one time, that the Board and its staff will seriously consider these failings, and act swiftly to improve the presently-proposed regulatory language for the WFMP.

**Key Elements for Development of WFMP Rulemaking**

On the most basic level, the intent of the legislature in enacting AB 904 and creating the WFMP permitting framework was to utilize such a framework to build upon the NTMP structure for an in-perpetuity permit, and the benefit such a structure provides to the landowner, in exchange for landowner commitments to uneven-aged management, long-term sustained yield, long-term planning, and increased timberland productivity over time. This is intended to benefit not only the landowner, but also the public generally and the natural environment. AB 904 was therefore intended to be a permitting vehicle with superior goals and standards from, and an

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improvement over, the pre-existent NTMP structure, not merely an expansion of the footprint of the NTMP permit area, or a perpetuation of the NTMP structure as-is.

To this point, the Board, the Management Committee and the staff seem to think that the WFMP regulations need only regurgitate the basics of the NTMP permitting framework in the form of new regulations to implement the framework of the WFMP. This is fundamentally incorrect, as is evidenced by the plain language of AB 904 itself. Public Resource Code section 4597 (a)(3) specifically provides,

*“[b]uilding upon the model provided by the nonindustrial timber management plan, it is the policy of the state 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.”* (Emphasis Added).

The legislation provides clear guidance here that the WFMP was intended not just to make NTMPs bigger in terms of their footprint; rather, the legislation makes it very clear that the intent was to also expand on, and enhance and improve the goals and ideals of unevenaged non-industrial timberland management based on principles of superior, prudent and responsible management, that achieves long-term sustained yield, increases in forestland productivity over time, and accrues social, and environmental benefits.

This letter articulates seven basic key elements that must be the foundation that underlies any attempt to develop regulations to implement the provisions of AB 904 and the WFMP permitting framework, which are discussed in turn. These are:

- 1). AB 904 authorizes a WFMP by a single landowner, not multiple or unlimited landowners;
- 2). AB 904 requires an objective to maintain, restore, or create uneven-aged managed timber stand conditions such that the WFMP regulations must require express articulation by landowners as to their commitment to the use of, and measures that will be used to achieve, uneven-aged management;
- 3). AB 904 requires "rigorous timber inventory standards," as enforceable mechanisms to evaluate consistently over time whether the statutory goals for sustained yield are being met;
- 4). AB 904 requires standards that ensure added carbon sequestration, which means timber inventory and age class distribution must be increased over time;
- 5). AB 904 requires standards to maintain ecosystem processes, and to promote forestland stewardship that protects watersheds, fisheries and wildlife habitats, which means the WFMP must consider baseline conditions of threatened and endangered and other species;
- 6). AB 904 requires a periodic (5-year) review and verification process, which must provide the public with a clear and meaningful opportunity to review and comment upon the plan summary, Review Team analysis, and development of the review;

7). AB 904 requires implementation in a manner that is consistent with other California laws, including the Porter-Cologne Water Quality Control Act and TMDL requirements, which includes disclosure of all existing, and potential as well as active erosion sites and control issues.

### **1). AB 904 Authorizes the WFMP for a Single Landowner not Multiple Landowners**

AB 904 and the California Legislature contemplated the WFMP permitting framework to be a vehicle designed for the use by a single, individual landowner, and not a conglomeration of multiple land ownerships and landowners. This is plain from the definition of “Working Forest Landowner,” embedded at Public Resource Code section 4597.1 (i), which states that a “Working Forest Landowner,” means, [a]n owner of timberland with less than 15,000 acres.” Had the legislature contemplated, or the legislation intended, for the WFMP permitting structure to be utilized by multiple landowners over multiple ownerships, then the legislation would not have been worded in this way.

We have raised this point numerous times previously, to the Board, Management Committee and staff. For example, CAG presented this concern, in writing, in its June 4, 2014, letter to the Board and then-Executive Officer, George Gentry. (CAG letter to Gentry, re: WFMP, June 4, 2014, at p. 5). (*See* Attachment A).

Allowing multiple landowners and multiple ownerships under a single WFMP permit has the potential to result in any number of unforeseen challenges to enforcement, monitoring and implementation of a WFMP permit by review team agencies and the public. The legislation clearly is construed to allow only for a single landowner per-WFMP permit.

The most recent version of the WFMP rulemaking pleading, dated 3/24/16, still clearly contemplates multiple landowners and multiple ownerships under a single WFMP permit. For example, under proposed regulation section 14 CCR 1090.26, “Change of Timberland Owner(s),” on lines 13, 15, and 18 on page 16 of the pleading, all refer to “landowner(s).” This language conjugation of the plural form of the word, “landowner,” is strewn elsewhere throughout the presently-considered pleading. The legislation and legislature only contemplated single landowners and singular ownerships for inclusion under individual WFMP permits, and the rulemaking pleading must be revised to address this critical oversight.

### **2). AB 904 requires an objective to maintain, restore, or create uneven-aged managed timber stand**

AB 904 and the California Legislature intended for the WFMP permitting framework to incentivize the use of management and silvicultural systems to ensure the creation and or maintenance of uneven-aged forest stands over time.

Public Resource Code section 4597 (a)(5) provides that,

“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 ecosystem processes and services, the working forest management plan shall comply with rigorous timber inventory standards that are subject to periodic review and verification.”

The WFMP regulations, therefore, must require express articulation by landowners as to their commitment to the use of, and measures that will be used to achieve, uneven-aged forest management. The WFMP rulemaking pleading, in its past, and present forms, fundamentally fails to clearly and plainly require a commitment to the creation, maintenance, and enhancement, over time, of an uneven-aged forest stand structure.

For the WFMP permitting framework, AB 904 defined “uneven-aged management,” to mean,

“Uneven aged management” means forest management with the goal of establishing a well-stocked stand of various age classes, which permits the periodic harvest of individual or small groups of trees to achieve sustained yield objectives of the working forest management plan, and provide for regeneration of trees and maintenance of age class structure.” (Public Resources Code section 4597 (g)).

In 1991, the Board of Forestry added further clarity as to the meaning of “variable age classes,” providing the following definition:

“Various Age Classes means a stand with at least three distinct layers of tree crowns (size classes).” (*Ref:* 14 CCR 895.1).

14 CCR 913.2 provides further guidance as to how management for an uneven-aged stand structure is to be achieved:

“Unevenaged management is utilized to establish and maintain an unevenaged stand structure. Unevenaged management attributes include the establishment and/or maintenance of a multi-aged, balanced stand structure, promotion of growth on leave trees throughout a broad range of diameter classes, and encouragement of natural reproduction.”

The vast majority of timberland stands present on privately-managed forestlands today have been subject to management for forest products production at some time in the past, and the vast majority of these have been managed previously using some form of an even-aged silvicultural management prescription. As pointed out by Former CAL FIRE Director, and former Board of Forestry member, Richard Wilson, in his November 16, 2015 letter to Board of Forestry Chairman, J. Keith Gilles, there are two basic areas that need to be answered with respect to the creation, maintenance, and enhancement of uneven-aged forest stands over time, and the verification of these: (1) existing age stand age class distribution, and (2) existing species composition and distribution. (Richard Wilson, Letter to J. Keith Gilles, re: Working Forest Management Plan, November 6, 2015, at pages 2-3 of 8.). (*See Attachment B*).

The rulemaking pleading for the WFMP proposed by the Board, Management Committee, and staff, in its past, and present incarnations, fails to include provisions that would clearly solicit, or assure, a commitment to the achievement, maintenance, and enhancement of an uneven-aged forest stand structure over time from individual landowners that may be granted a WFMP permit from CAL FIRE. What’s more, the rulemaking pleading, in all its past, as well as its present incarnation, similarly fails to contain provisions to restrict the silvicultural applications available for use in a WFMP to only those that fall within the uneven-aged

management category (*Ref: 14 CCR 913.2*), or to restrict the use of alternative prescriptions that do not expressly state and verify the intent to attain, maintain, and enhance, and uneven-aged forest stand condition.

We have raised the concern about the failure of the rulemaking to implement AB 904 and the WFMP to explicitly require a statement of commitment to uneven-aged management, and the failure of the rulemaking to expressly restrict the use of other categories of silvicultural prescriptions on numerous previous occasions to the Board, Management Committee, and staff, including in EPIC's March 2, 2015 letter to Board Chairman Gilles pertaining to the original 45-day Notice of Proposed Rulemaking. (EPIC Letter to Chairman J. Keith Gilles, Re: WFMP 45-day Notice, March 2, 2015, at p. 2). (*See Attachment C*). This same concern was restated again in EPIC's June 15, 2015 letter to Chairman Gilles regarding the second 45-day Notice of Proposed Rulemaking, using virtually identical language, in an attempt to reinforce the point. (EPIC Letter to Chairman J. Keith Gilles, Re: WFMP 45-day Notice, June 15, 2015, at p.2). (*See Attachment D*).

### **3). AB 904 Requires "Rigorous Timber Inventory Standards"**

A critical requirement of AB 904, and a very basic principle of professional forest practice, is the need for rigorous timber inventory standards, and associated standards to allow for documentation, monitoring, and verification of existing and projected timberland inventories on a project-wide basis, as well as on a stand-by-stand basis.

We have brought the concern about the lack of adequate language in the WFMP rulemaking pleading to achieve this critical requirement of the enacting legislation to the Board, Management Committee, and staff, on numerous occasions. First, EPIC raised this point in its letter to Management Committee Chairmen, Stuart Farber, dated April 7, 2014. (EPIC Letter to Management Committee regarding WFMP Regulations, April 7, 2014, at p. 2). (*See Attachment E*). This concern was reiterated again in EPIC's March 2, 2015 letter regarding the initial 45-day Notice of Proposed Rulemaking for the WFMP. (EPIC Letter to Chairmen J. Keith Gilles, regarding WFMP, March 2, 2015, at p. 2). This same concern was reiterated once again, using virtually identical language, in EPIC's comments to the Board regarding the second 45-day Notice of Proposed Rulemaking, dated June 15, 2015. (EPIC Letter to Chairmen J. Keith Gilles, regarding WFMP, June 15, 2015, at p. 2). We again raised this concern, and clearly laid out the elements which we believe are necessary to assure rigorous timber inventory standards, in the EPIC and CAG Letter to Chairmen J. Keith Gilles for the January 15, 2016 WFMP workshop. (EPIC and CAG Letter to Chairmen J. Keith Gilles, January 15, 2016, at p. 2). (*See Attachment F*).

Similarly, in his November 6, 2015 Letter to Chairmen J. Keith Gilles, former Board Member, and former CAL FIRE Director, Richard Wilson, clearly laid out the reasons as to why the current iteration of the rulemaking being contemplated for the WFMP will not assure that timber stand inventories are rigorously monitored, reported, and evaluated for compliance with the enacting statute, and also clearly laid out the requisite elements necessary to attain the objectives of the statute. Director Wilson identifies the core variables which need to be included to provide proper WFMP. These require disclosure of:

- Existing age class distributions
- Existing species composition Existing size class distributions

- Existing stocking levels, and
- Existing volume per acre levels.

All of these elements are necessary for inclusion, both at a WFMP-project level-scale, but, importantly, also at an individual “Management Unit,” scale. In the absence of this information, evaluating the baseline conditions, evaluating subsequent implementation as well as performance, and more significantly enforcement of the WFMP is made problematic since the baseline conditions are not documented to allow an adequate comprehension and evaluation of the proposed management plan or silvicultural regime.

Disclosure and evaluation of baseline forest conditions at the WFMP project-level-scale, the “Management Unit, scale (*Ref:* PRC 4597.1 and at the level of the individual “Strata” scale, (*Ref:* PRC 4597.1 (e)), and the “Stand” scale, (*Ref:* PRC 4597.1 (d)), are necessary, at a minimum, in order to evaluate existing forest conditions and anticipated growth rates, and, thereby, to calculate a realistic projection of harvestable volume over time that is sustainable, while continuing to grow forest inventory to achieve LTSY.

The requirements embedded in statute for development of “rigorous inventory standards,” do not simply end after the baseline conditions are established as part of the development of the original WFMP; rather, to truly achieve the goals of attaining uneven-aged management, maximum sustained productivity of high quality wood products (MSP), and long term sustained yield (LTSY), standing forest inventory on a WFMP project area must be closely monitored, documented, and verified throughout the life of the project, i.e., into perpetuity.

There are at least three stages where documentation and verification of a “rigorous inventory,” must be provided, at all the levels described above, in order to achieve compliance with the intent of the enacting statute, and the Forest Practice Act, itself. These are: 1) the initial WFMP development and project submittal/evaluation/approval; 2) for each “Working Forest Harvest Notice” prepared by the RPF or “Designated Agent”; and 3) at each Five-Year Review.

Fundamentally, the most important aspect of demonstration and verification of uneven-aged management and LTSY through the “rigorous inventory standards” is for the Board to clearly articulate the standards and constraints for the modeling regimes to be used by the RPF in developing and implementing a WFMP. Proposed Rule 14 CCR 1094.6 (g), beginning on line 9, page 26, of the March 2016 version of the rulemaking pleading requires that the RPF describe, “[t]he baseline conditions found on the WFMP and including the future conditions and planning horizon associated with the estimate of LTSY.” (Proposed Rule 14 CCR 1094.6 (g)(1)). This so-called, “description,” does not provide enough guidance to the RPF as to how the baseline condition, or the anticipated future conditions, are to be described, insofar as the actual methods, models, and schemes to be utilized. This, in essence, is a main failure of the proposed rulemaking in this section that must be addressed in order to ensure that the regulations adopted by the Board meet the intent of the enacting statute, and the FPA.

#### **4). AB 904 requires standards that ensure added carbon sequestration, which means timber inventory and age class distribution must be increased over time**

Public Resources Code section 4597 (a)(5) clearly provides that the intent of the legislature in enacting AB 904 is that public benefits such as added carbon sequestration over time must be achieved as part of the implementation of each individual WFMP, and that such



public benefits are to be verified, documented, and achieved through the development of “rigorous timber inventory standards.” Thus, the minimum stocking standards articulated in proposed rule section 14 CCR 1094.27, beginning on line 16, page 55 of the March 2016 rulemaking pleading, are woefully inadequate, insofar as they rely on the bare minimum resource conservation standards, and will not achieve increases in growth, standing inventory, or accrue the required public benefits over time.

We have expressed this concern numerous times, and in virtually every one of our comment letters to the Board, Management Committee, and staff, including our April 7, 2014 letter to Chairman Farber and the Management Committee (*Ref:* p. 1-2), our March 2, 2015 letter to Board Chairman Gilles regarding the first 45-day Notice of Proposed Rulemaking (*Ref:* p. 2), and our June 15, 2015 letter to Board Chairmen Gilles regarding the second 45-day Notice of Proposed Rulemaking (*Ref:* p. 2). The statutory mandate to secure added carbon sequestration over time is a fundamental, underpinning goal of the enacting legislation, and not simply qualitative intent language that can go uncodified, unachieved, or unenforced; rather, the Board clearly has a responsibility under the enacting legislation, as well as the FPA, to ensure that the rules it promulgates to implement AB 904 contain substantive provisions to assure achievement of this goal.

As articulated in the enacting legislation, and as described in sub-section (2) above, achievement of added carbon sequestration and other related public benefits, must be achieved, at the outset, through the development of credible, verifiable, and enforceable “rigorous timber inventory standards” which expressly provide for this benefit, and strict adherence to the resultant modeling from these, when scheduling harvest locations, projected harvest volumes, and when evaluating achievement of increases in standing forest inventory. The present rulemaking being considered by the Management Committee and the Board simply misses the boat on this critical element.

#### **5). AB 904 requires standards to maintain ecosystem processes, and to promote forestland stewardship**

Similar to the mandate to achieve added carbon sequestration through the implementation of a WFMP, AB 904 also articulates a mandate to maintain ecosystem processes and promote forestland stewardship, and thus, tangible and meaningful standards must be promulgated in the implementing regulations presently before the Management Committee. In order to achieve maintenance of ecosystem process through the promotion of superior forestland stewardship, the Committee, the Board, and the regulations it adopts to implement AB 904, must consider, and establish the baseline condition of the multitude of species and associated ecosystem dynamics and processes upon which each species may depend, and then must also consider how proposed forestland management under an individual WFMP will be designed and implemented to achieve the necessary goals of maintaining ecosystem processes for the species identified.

It is not enough to simply state and presume, as the Management Committee has to this point, that maintenance of ecosystem processes, and protection of fish and wildlife, are “covered,” by pre-existent sections of the Forest Practice Rules. The WFMP was intentionally designed and construed by the legislature to incentivize superior forest management and stewardship, in exchange for a more streamlined permitting process, and an in-perpetuity permit approval, and therefore, it is simply not enough to fall back to the argument that issues related to

maintenance and enhancement of ecosystem processes and protection of at-risk species is otherwise “covered,” in the FPRs.

This concern has also been repeatedly raised to the Management Committee, Board, and staff, including our April 7, 2014 letter to Chairman Farber and the Management Committee (*Ref:* p. 1-2), our March 2, 2015 letter to Board Chairman Gilles regarding the first 45-day Notice of Proposed Rulemaking (*Ref:* p. 2), and our June 15, 2015 letter to Board Chairmen Gilles regarding the second 45-day Notice of Proposed Rulemaking (*Ref:* p. 2). Furthermore, in our March 2, 2015 letter, EPIC included a number of attached studies detailing the status of several rare, threatened, and endangered species extant in California that should be considered as part of the baseline evaluation of the potential significant adverse effects of the proposed rulemaking as part of the required CEQA analysis. (*Ref:* EPIC letter to Chairman Gilles regarding first 45-day Notice of Proposed Rulemaking, March 2, 2015, p. 17). Incredulously, Board staff contacted EPIC staff to inquire about the relevance and applicability of the attached studies and documentation to the development of the WFMP regulations.

The Management Committee, Board, and staff, have summarily ignored the mandate to actually promulgate rules and requirements to ensure maintenance of ecosystem processes and to ensure protection of fish and wildlife as part of the WFMP rulemaking to this point, as is evidenced by the complete lack of language in the previous or current WFMP rulemaking pleadings. Unless and until this failure is addressed, the WFMP regulations fail to meet the intent of the enacting statute, the FPA, and CEQA, and are therefore deficient.

#### **6). AB 904 requires a periodic (5-year) review and verification process**

While improvements have been made in the rulemaking language to create the Five-Year Review process, many fundamental problems still remain. For example, while proposed rule 14 CCR 1094.29, beginning on line 21, page 56 of the current version of the rulemaking articulates that the Department is responsible for publishing the notice of commencement of the Five-Year Review, this rule section does not actually lay out whom is actually responsible for preparing the Plan Summary, which is to be the basis of said review. What’s more, this rule section does not actually spell out when, how or if, the review team agencies will actually receive notification and/or be able to participate in, the preparation of the Plan Summary.

Meanwhile, proposed rule 14 CCR 1094.29 (b), beginning on line 11, page 57 of the current rulemaking pleading, is entirely unclear and ambiguous as to what process will actually occur and how it is to be conducted, in order to conduct the evaluation of the Plan Summary, and to subsequently generate the required Findings. For example, 1094.29 (b) calls on the Department to convene a meeting with the interdisciplinary review team, referring to 14 CCR 1037.5, but does not clearly spell out the nexus between the meeting, the Plan Summary, the Five-Year Review, or the Findings. Additionally, this proposed rule, and its reference to 14 CCR 1037.5 seems unclear because it does not state that the process to be undertaken is, and is not inclusive of, wholly or in-part, all the substantive provisions contained in 1037.5, such as those that require public availability and participation in review team meetings. The Five-Year Review process, which includes an interdisciplinary review team meeting to evaluate the information in the Plan Summary, should mirror the review team process outlined in 14 CCR 1037.5, and be clearly spelled out.



Proposed rule 14 CCR 1094.29 (b), beginning on line 11, page 57 of the pleading articulates that the purpose of the Five-Year Review is to “verify” that the WFMP is consistent with the approved plan and other applicable laws. The reference to mere “verification,” seems to intimate that the responsibility of the review team is to simply, in a manner of speaking, “check the box,” rather than to actually review, evaluate, and consider compliance through publically - available information, and thereby, reach conclusions supported by substantial evidence in the form of the required Findings. As written, the proposed rule leads to the conclusion that the Five-Year review is just a perfunctory paper exercise to “verify” the claims of the landowner, RPF, or “Designated Agent.” This not only violates the intent of the enacting statute, but also, importantly, deprives the public of its right to meaningful engagement.

Finally, proposed rule 14 CCR 1094.29 (c), beginning on line 23, page 57 of the March 2016 rulemaking pleading calls on the Plan Summary to contain only the “number” of violations received and the “number” of substantial deviations received for the subject-WFMP under review. How it is deemed that simply providing the “number,” rather than nature, of violations and substantial deviations for a WFMP as part of the Five-Year Review Plan Summary is adequate for purposes of meaningful disclosure to either the review team or the public is unknown. Clearly, it is important to actually understand what the violations or deviations may have been, and how, or if, they may have affected conduct and operations of the WFMP.

We have raised this concern to the Management Committee, Board, and staff on numerous previous occasions, including in our April 7, 2014 letter to the Management Committee (*Ref:* p.8), our March 2, 2015 letter to the Board (*Ref:* pp. 14-15), and our June 15, 2015 letter to the Board (*Ref:* pp. 17-18). The edits heretofore made to this section, while admirable, are nonetheless mere window-dressing, and do not address the substantive confusion and lack of clarity we have pointed out countless times previously.

**7). AB 904 requires implementation in a manner that is consistent with other California laws, including the Porter-Cologne Water Quality Control Act and Endangered Species Act**

PRC section 4597 (b) clearly provides that the WFMP and its implementing regulations must comply with all other applicable laws, including the Porter-Cologne Water Quality Control Act, and the California Endangered Species Act. To this point, the Management Committee Board, and staff have completely failed to include any language whatsoever to meet the Board’s obligation to promulgate regulations to interpret, enforce, and implement this statutory requirement. Disturbingly, and contrary to the intent of the enacting legislation, the proposed rulemaking for the WFMP being considered by the Management Committee and Board serve to perpetuate the inconsistencies and inadequacies that plague the pre-existent FPRs as they relate to compliance with other applicable laws, including water quality and endangered species protection laws.

For example, the proposed rulemaking to implement AB 904 for the WFMP presently before the Management Committee and Board still perpetuates the optional reliance by landowners on the known-defunct provisions of 14 CCR 919.9 (g) [939.9 (g)] as a means of demonstrating “take” avoidance of the northern spotted owl. The U.S. Fish and Wildlife Service has extensively documented, and EPIC has long-argued, that the provisions of “option-(g)” are unlikely to achieve “take” avoidance, and are therefore not in compliance with the federal Endangered Species Act (ESA). Indeed, in 2014, EPIC submitted a Public Records Act Request

to CAL FIRE, requesting its documentation of how the Department tracks, and evaluates NSO habitat loss and degradation due to logging under projects it approves. The Department's response was very telling, in that it had no responsive documents, and admitted that it does not, in fact, even keep track at all.

More recently, the California Department of Fish and Wildlife's long-overdue Status Report for the state of the northern spotted owl in California (CDFW 2016), has similarly studied the efficacy of the provisions of option-(g), and found them lacking, so much so, that the CDFW Report contains Management Recommendations that CDFW work with the Board, CAL FIRE, and the U.S. Fish and Wildlife Service to seek to improve extant FPRs to better protect northern spotted owls against illegal "take."(CDFW 2016, Management Recommendation 8, p. 196).

The issue regarding the efficacy of northern spotted owl "take" avoidance options extant in the present FPRs is but one example among many of how the FPRs fail to protect rare, threatened, and endangered species, and how, by extension, mere reliance upon these faulty rule provisions renders the proposed regulations to implement AB 904 and the WFMP inconsistent with the enacting statute, CEQA, and other applicable federal and state laws.

Another example of how the rulemaking proposal for the WFMP fails to comply with other applicable laws is the well-documented failures and inconsistencies of the proposed package to address the requirements of the federal Clean Water Act, the Porter-Cologne Water Quality Control Act, Basin Plans, Waste Discharge Requirement Permits, TMDL Action and Implementation Plans, and Erosion Control Plans.

This concern has been repeatedly raised in letter submitted to the Management Committee, Board, and staff, by Coast Action Group, and Alan Levine, including, but not limited to, in letters dated, June 4, 2014 (*See Attachment G*), June 17, 2014, (*See Attachment H*), August 20, 2014 (*See Attachment I*), February 4, 2015 (*See Attachment J*), and May 20, 2015 (*See Attachment K*). Clearly articulating and establishing the nexus between measures contained in an individual WMFP to ensure erosion control, and the ancillary obligations to comply with watershed or region-specific water quality requirements, such as TMDL Action Plans, and Water Quality Control Erosion Control Plans, is a fundamental obligation of the Management Committee, Board, and staff, to absolutely ensure compliance with the provisions of the enacting statute for the WFMP, as well as the FPA, CEQA, and all other applicable water quality laws, regulations and requirements.

To this point, it seems the Management Committee, Board, and staff, have opted to simply "mail it in," instead of working to ensure a clearly established and enforceable nexus, and or to ensure consistency and congruency. Until this failure is addressed, the WFMP regulations will remain defective, and patently out-of-compliance with applicable legal requirements.

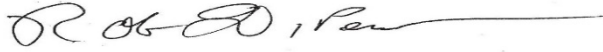
## **Conclusion**

EPIC and Coast Action Group have herein once again plainly spelled out the many shortcomings and deficiencies of the Management Committee, Board, and staff's approach to promulgating implementing regulations for AB 904 and the WFMP. Ultimately, it is the Board that is responsible to ensure that it discharges its statutory obligations in the course of its adoption of the proposed rulemaking, and, accordingly, EPIC and CAG once again implore the Board that the entirety of its seated-membership take responsibility for the development of the

proposed implementing regulations, instead of relying upon the clearly faulty singularly-lead process being undertaken in the Management Committee presently.

Please do not hesitate to contact us should there be questions.

Sincerely,



Rob DiPerna  
Environmental Protection Information Center

Alan Levine



Coast Action Group

### **Works Cited/Attachments**

Attachment A: Coast Action Group Letter to Executive Officer George Gentry regarding WFMP Regulations. June 4, 2015.

Attachment B: Richard Wilson Letter to Chairman J. Keith Gilles regarding WFMP Regulations. November 6, 2015.

Attachment C: EPIC Letter to Chairman J. Keith Gilles regarding WFMP 45-day Notice of Proposed Rulemaking. March 2, 2015.

Attachment D: EPIC Letter to Chairman J. Keith Gilles regarding WFMP 45-day Notice of Proposed Rulemaking. June 15, 2015.

Attachment E: EPIC Letter to Management Committee Chairman Farber regarding WFMP Regulations. April 7, 2014.

Attachment F: EPIC and Coast Action Group Letter to Chairman Gilles regarding WFMP Board Workshop. January 15, 2016.

Attachment G: Coast Action Group Letter to Executive Officer George Gentry regarding WFMP Regulations. June 4, 2014.

Attachment H: Coast Action Group Letter to Executive Officer George Gentry regarding WFMP Regulations. June 17, 2014.

Attachment I: Coast Action Group Letter to Executive Officer George Gentry regarding WFMP Regulations. August 20, 2014.

Attachment J: Coast Action Group Letter to Regulations Coordinator Thembi Borrás regarding WFMP Regulations. February 5, 2015.

Attachment K: Coast Action Group Letter to Regulations Coordinator Thembi Borrás regarding WFMP Regulations. May 20, 2015.