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May 20, 2015

Affiliate of Redwood Coast Watersheds Alliance

State Board of Forestry and Fire Protection  
Attention: Thembi Borrás  
Regulations Coordinator  
P.O. Box 944246  
Sacramento, CA 94244-2460

**Subject: Working Forest Management Plan – Rulemaking – AB 904/Regulatory Compliance**

This is Coast Action Group's 5<sup>th</sup> commenting round on this Rule Making project. We are frustrated and concerned that after all this work, in committee and external review and comment from responsible agency and the public, that this latest version of rules relating to the implementation of the language and intent of AB 904 is not consistent with: 1) the language and intent of AB 904, California Resources Code, and Federal Clean Water Act requirements.

Previous comments from CAG (currently in the file on this project) on this subject ( June 4, 2014, July 17, 2014, August 20, 2014, February 4, 2015 ) are still on point and must be considered in the review of this project.

**From Notice:**

***Laws on which the proposed action is based:***

- 1. AB 904 creates the Working Forest Management Plan (WFMP) program. The WFMP is a long-term forest management plan available to nonindustrial landowners (with less than 15,000 acres of timberland) if they commit to uneven aged management and sustained yield. It also obligates the Board to adopt regulations needed to implement the provisions of AB 904 by January 1, 2016.*

The intent of AB 904 was to create a program of forest production management that would provide resource protection for forest production, forest resource values, and forest water quality values that are superior to the protections provided under the current Forest Practice Rules. The benefit for the landowner is a onetime approval process with established management standards. The benefit for the public and responsible managing agencies is a high level of resource protection. The benefit for all parties is superior forest production – with added resource protection. At this point, under the proposed rules for the WFMP uneven aged management is the only beneficial goal (as noted in the notice and proposed regulation).

It can be argued that the unevenaged commitment is not even totally enforceable as certain evenaged silvicultural prescriptions may be allowed (Group Selection, Alternative Prescription, Rehabilitation – all allowable silviculture prescriptions that can have negative water quality, forest value, and LTSY effects. ). With such a plan approved in perpetuity (with proposed rule language), that holds the public and other responsible agency held at arms length – without significant or periodic in-depth review and comment, without meaningful information available to all parties, without sufficient standards for resource protection in place, and failure of the proposed rules to be consistent with the intent of AB 904 and other State and Federal Regulatory code; it can be fairly argued that this rule making process is not consistent with the legislation, Cal Water Code, and the federal Clean Water Act. It can be argued that there is no net benefit to the resource or the public.

It can also be argued if the only gain to the public and the resource from such a rule is that some evenaged silvicultural practices will be put aside to obtain a forever permit that may not necessarily be upgraded or improved upon as regulatory authorities may deem necessary for future Best Management Practices (BAT – Best Available Technology); the out come of such permitting is likely to result with increased risk for resources or diminished resources.

Additionally; one might ask the question: If evenaged silviculture is such a problem in forest management that it is necessary to approve overly large (and unmanageable) plans in perpetuity (without serious long term review, public input – and with serious difficulties in adjusting such a plan to new rules); why not just eliminate evenaged silviculture from available practices under the rules – at all?

In the Notice there is a discussion of costs for agency review. Also noted, is the fact that review costs are a function of the complexity of a plan (THP, NTMP, WFMP). Obviously, plans to be approved in perpetuity should require a high level of review (and possibly periodic re-review of conditions and conformance). Also – obviously, a 15,000 acre plan can be very complex (more so than a 150 acre THP or even a 2,500 acre NTMP) and thus require vastly more agency time to do adequate review to protect the resource. Given the review time lines in the proposed rules there is not sufficient time allowed for responsible agency to adequately address issues on such complex plans. However, it can be fairly argued that the cost for reviewing such large plans will be significantly greater than accounted for in the Notice. Furthermore, the cost justification analysis indicates there “may” be savings associated with the approval of such large plans. The source or amounts of such savings is not supported by analysis or logical discussion. It is suggested that some undisclosed diminished number of THPs (and NTMPs) that responsible agencies will have to review will be reduced in the future. There are no numbers here and no real logical justifications for assumptions made. CAG suggests costs of review and management of such large timber operations for agency review will, by far, outstrip any potential savings – with the net result of compromised resources.

### **Working Forest Management Plan – AB 904 Intent**

As stated in previous comments on this rule making by CAG, the intent of AB 904 was to allow for plans in perpetuity if such plans provided serious benefits to the resource – beyond the current FPRs. This goal has not been demonstrated by the currently proposed rule language.

The language and project review for such rule making must demonstrate compliance with the language and intent of the legislation.

(j) “Working forest management plan” means a management plan for working forest timberlands, 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.

How does the proposed language meet the intent stated in the legislation (above or below)?

(d) A description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations. This shall include disclosure of active erosion sites from 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 in an amount deleterious to the beneficial uses of water, an erosion control implementation plan, and a schedule to implement erosion controls that prioritizes major sources of erosion.”

Additionally; the AB 904 language requires compliance with all applicable laws and statutes (that would include State of California and Federal Code).

## **Water Quality Standards**

Referencing the last sentence in the quoted section above and the plain language of the the legislation, it is clear that the present rule making language is not consistent with the intent and language of AB 904. Previous comments from CAG and the Regional Board have made clear argument on this point.

To comply with State Water Code and the clear wording in AB 904 “ Potential” sources of sediment must be addressed in an *Erosion Control Implementation Plan*.

I am sure you are aware that most all streams in the north coast basin are listed on the States List of Water Quality Limited Segments (303 (d) list) – for various pollutants (sediment, temperature, nutrients, etc.). The cause of these impaired listings, to a great extent, are attributed to inappropriate logging practices (Coastal Zone Management Act Re-authorization, Independent Scientific Review Panel, etc – the Forest Practice Rules do not protect beneficial uses). In this case the proposed rule language relies on the basic FPRs while limiting some evenaged practices – without a robust review process. The point here is that you can not protect or restore water quality values without limiting “potential” sources of pollutants and without dealing with both active and potential sources of said pollutant by use of an accountable methodology (this is exactly what TMDLs do and what the rule making process must address).

The proposed rules, as they stand now, contain language that allows for deviation from applicable protective practices necessary to protect beneficial uses. This includes the failure to deal with potential sediment sources. This failure may go beyond inconsistency with State Code. The current rule language will create a failure to comply with the Federal Clean Water Act (or – set up a situation of non-compliance with the Clean Water Act).

As noted above; almost all north coast rivers are listed as impaired (Water Quality Standards are not being met - forest practices being a major polluter). TMDLs (both, State and Federal) have set benchmarks (pollution reduction targets – allowing for a margin of safety factor to assure compliance) for pollutant loading limitations (effluent limitations). These limitations apply to THPs, NTMPs, and would apply to WFMPs or any land use that poses the threat of increased delivery of a listed pollutant. The control and reduction of listed pollutants is also mandated under State Water Code. Exceedance of these benchmarks is not permissible under the Clean Water Act (and State Water Code). Pollutants are not allowed to cause impairment or exacerbate (add to) impairment of any surface waters. Additionally, exceedance provokes review and required improvement of BMPs (BAT). (please review attached documents in Appendix)

Under the Forest Practice Rules, no plan may be approved that is not consistent with the applicable water quality control plan (Basin Plan). The rule making process in this case should be consistent with the FPR intent to protect and recover water quality values (Water Quality Standards). The Basin Plan contains language (anti-degradation language – under Water Quality Objectives) that is consistent with both, State and Federal, mandates to limit pollutants (to not cause or worsen impairment). (Note: Basin Plan Anti-degradation language – Water Quality Objectives - below):

*"Controllable water quality factors shall conform to the water quality objectives contained herein. When other factors result in the degradation of water quality beyond the levels or limits established herein as water quality objectives, then controllable factors shall not cause further degradation of water quality. Controllable water quality factors are those actions, conditions, or circumstances resulting from man's activities that may influence the quality of waters of the State and that may reasonably be controlled."*

Regional Board Implementing Programs (WDRs and Waivers) may help cure some issues regarding the failure of the FPRs to protect beneficial uses. However, these Implementing Programs are not fully protective (i.e. they currently fail to address pollutant impacts from canopy loss, erosion from hillslope runoff shortened lag to peak flow erosion impacts, and some legacy issues). Therefore, it is imperative that the Board of Forestry approve rule making that is fully protective and consistent with all State and Federal Code. (please review court decisions on this subject - attached).

### **Exceptions to the rules allowed (by RPF justification and approval) for logging road construction and watercourse crossings:**

The examples below (wording taken from the text of proposed rules) indicate that sediment control activities are to occur “when feasible” and that language that proposed rule language allows deviation from specified practices in place to control pollutants. It is not clearly defined what is to be considered “feasible” and/or the application of the word “feasible” leaves open the possibility that necessary pollutant (sediment) reduction targets are not being met. It is not being argued that no flexibility is to be allowed. It is being argued that timber harvest operations must demonstrate compliance with pollution reduction standards required under State and Federal statute. This

process would require an Erosion Control Implementation Plan that inventories and monitors all active and potential sources of sediment.

**Language examples:**

923.2

(a)

*(2) Avoid unstable areas and connected headwall swales to the extent feasible and 11 minimize activities that adversely affect them.*

*(3) Minimize the size of cuts and fills to the extent feasible*

*(5) Be hydrologically disconnected from watercourses and lakes to the extent feasible to 16 minimize sediment delivery from road runoff to a watercourse, and reduce the potential for 17 hydrologic changes that alter the magnitude and frequency of runoff delivery to a watercourse*

923.4

*(a) Logging roads and landings shall be hydrologically disconnected from watercourses 6 and lakes to the extent feasible to minimize sediment delivery from road runoff to a watercourse, 7 and reduce the potential for hydrologic changes that alter the magnitude and frequency of runoff 8 delivery to a watercourse.*

923.5

*(a) All logging road and landing surfaces shall be adequately drained through the use of logging road and landing surface shaping in combination with the installation of drainage structures or facilities and shall be hydrologically disconnected from watercourses and lakes to 24 the extent feasible*

923.9

*(1) Adequate surface drainage at logging road watercourse crossings shall be 7 provided through the use of logging road surface shaping in combination with the installation of drainage facilities, ditch drains, or other necessary protective structures to hydrologically disconnect the road from the crossing to the extent feasible.*

*(2) Consistent with 14 CCR § 923.5(a)-(i), drainage facilities and ditch drains 11 shall be installed adjacent to logging road watercourse crossings, as needed, to hydrologically disconnect to the extent feasible the logging road approach from the crossing, to minimize soil erosion and sediment transport, and to prevent significant sediment discharge during and upon 14 completion of timber operations*

**1094.6 Contents of WFMP**

*(z) Explanation and justification for, and specific measures to be used for, tractor operations on unstable areas, on slopes over 65%, and in areas where slopes average over 50% where the 1 EHR is high or extreme.*

*(aa) Explanation and justification for tractor operations in areas designated for cable yarding.*

*Watercourses, Lakes, Wet Meadows, or Other Wet Areas.*

(cc) Explanation and justification for use of landings, logging roads and skid trails in the protection zones of

(dd) Explanation and justification of any in-lieu or alternative practices for Watercourse and Lake protection.

(ee) Explanation of alternatives to standard rules for harvesting and erosion control.

(ff) Explanation and justification for landings that exceed the maximum size specified in the rules.

The language above is new and indicates that exceptions are allowed under the proposed rules. These exceptions pose risk of increased sedimentation and, thus, should be reviewed and monitored as part of the Erosion Control Implementation Plan. Failure to track the control of active and potential sources (on such large and complex plans and with exceptions to rules) virtually assures that necessary pollution control objectives will not be met.

(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.

The newly added language for erosion control implementation ( Option 1 & 2 – p. 27) does not meet the requirements for the control of the pollutant sediment (as discussed above in this comment letter).

Option 1 - restricts assessment and control of sediment sources to roads and landings (thus limiting accounting for active and potential sources outside of roads and landings). All sediment sources must be addressed in a Erosion Control Implementation Plan

Option 2 - language excludes existing active or potential sediment sources (a land owner is responsible for all sediment production on a property or in the plan area), as consideration of sediment sources is limited by the word “significant” (significant is not defined) – and would allow failure of consideration of pollutant sources that could and should be controlled. The proposed language does not include in the inventory of sediments sites to be controlled where there is existing potential (but not necessarily active erosion) with a risk of delivery of sediment to surface waters.

Both, new options evade responsibility to address potential delivery of pollution that is mandated by legal statute.

### **Five Year Review - Public input capacity**

The proposed rule language allows for 30 days (assumed commencing on day of notice) for the public to submit information and comment. This 30 day (assumed from date of notice – issue is not clear) period limits the public ability to analyze and comment on any related agency review documents, findings, field inspection reports related to the 5 year review, and/or the department summary. Much of this information would not be available until after the proposed public comment period is closed.

The proposed wording restricts the ability of the public to respond with full knowledge of existing conditions. The public should have access to all agency reports and findings and have sufficient time to assess and comment on this information prior to the 5 year review close of comment period for the public.

It is suggested that the public be allowed 20 working days for review of such 5 year review documents until the comment period is closed. A similar comment period should be applied in the case of substantial deviations.

### **Notice – says consistent with all State Code**

The FPRs (currently not certified by the EPA as Best Available Technology - BAT) and the proposed rule making language for the WFMP (as a process) is intended to establish Best Management Practices or BAT for areas of operation in the plan area of an approved harvesting plan (or in this case a Working Forest Management Plan). For such BMPs (BAT) to be acceptable, the proposed rules must meet the intent of AB 904 and also be consistent with all applicable code (State and Federal).

Comment from the Regional Board and Coast Action Group has established that the current proposed rules for the WFMP are not consistent with “all State Code”.

### **CEQA Compliance**

The Board of Forestry (a Certified Regulatory Program) must adhere to specific CEQA requirements. The Board must consider, analyze, deliberate, and adjust policy and rules in conformance with CEQA.

Evidence in the proposed rule and related file clearly demonstrate inconsistency with applicable law – including by not limited to: Language and intent of AB 904, State Water Code, Applicable Water Quality Control Plan (Basin Plan), and compliance with TMDL bench marks (which implies Clean Water Act violation). It can be fairly argued that the current proposed language is not sufficient to meet the intended goal(s) of protecting and restoring water quality values and forest productivity and wildlife values.

The current file, comments and recommendation, from agency (Regional Board, CDFW), the public, and other concerned parties have pointed out inconsistencies and issues that require review and deliberation that would result in correction of deficiencies noted in the current proposed WFMP rule language. Many of these issues are obvious deviation or inconsistency with State and Federal code as well as the language and intent of the initiating AB 904 language.

We expect that these noted issues will be addressed in the environmental review of this project and corrected.

Sincerely,  
Alan Levine, for Coast Action Group

Appendix;

Attached (for your review) are two federal court decisions on the necessity of meeting effluent limitations – in cases of impaired waterbodies - where impairment or adding to impairment is not permissible. These cases are for metals – they apply to all pollutants and related effluent limitations and/or bench marks established by TMDLs.

Please add these cases to the record.

Santa Monica Baykeeper vs. Kramer Metals (attached)

Santa Monica Baykeeper vs. International Metals EKCO (attached)

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