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March 20, 2016

Affiliate of Redwood Coast Watersheds Alliance

State Board of Forestry and Fire Protection
Attention: Board Chair, J. Keith Gillis,
Matt Dias, Interim Executive Officer
P.O. Box 944246
Sacramento, CA 94244-2460

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

This is Coast Action Group's 6th round of comments on this rulemaking project. We are submitting these comments in reference to the new plead, dated March 24, to be considered by the Management Committee and the Board of Forestry.

We are frustrated and concerned that after all this work, in committee and the external review and comment process from responsible agency and the public, that this latest version of rules relating to the implementation of the language and intent of AB 904 continues to be inconsistent with: 1) the language and intent of AB 904, 2) other State and relevant code: California Resources Code, and Federal Clean Water Act requirements. It appears to us that participation in this process, which includes comment directed to bring legal consistency to this rulemaking process, fails to acknowledge compliance issue. And, where the Management Committee fails to make necessary adjustments to be consistent with the intent of AB 904 and other legal mandates.

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, March 20, 2015) are still on point and must be considered in the review of this project. These documents will be re-submitted if necessary.

Comments (below) address language in the new (March 24, 2016) plead. The new pleading language includes few language changes and, for the most part, makes no substantive changes from the language that was rejected by OAL.

Most of the discussion in included this comment letter is related to water quality responsibility issues as part of the WFMP. However, there continues to be a failure for the rule making language to address outstanding issues – including: Multiple ownerships under one plan, making public participation relevant in the 5 year review process, rigorous compliance review (baseline data and LTSY), and other areas that have been pointed out that are vague or not consistent with State Code.

From: the CAG comment on the March 7th plead – which applies to the March 24 plead – with discussion – below:

1094.6 Contents of WFMP

(j) An erosion control implementation plan with information as required by 14 CCR § 923.1(e). 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.

It appears the intent to be for the initial ECIP to be subject to roads and landings only – and with future NTO's to upgrade ECIPs by language included in 1094.8 (n). However, language in 1094.8 currently limits application of the ECIP to the full scope of items necessary in the ECIP.

It should be noted that NTMPs currently include consideration of all erosion sites in an NTMP Erosion Control Plan - all sites including existing and potential (and not limited to erosion sites related to timber operations) – are included in a ECP stand alone document attached to the plan.

1094.8 Working Forest Harvest Notice Content

(n) p. 36 lines 1 - 10: An updated erosion control implementation plan that reflects erosion control mitigation 1 measures for the harvest area and any appurtenant roads if conditions have changed since the WFMP was approved and a certification from the RPF that no additional listings of water bodies to Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313(d)) list have occurred on the lands of the plan. Additionally, this shall include disclosure of erosion sites from skid trails, skid trail 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 these significant existing erosion site(s).

Here, I think the intent (attempt) was to up date the initial ECIP - with inclusion of all existing and potential controllable erosion sites. The control language "if conditions have changed" limits efficacy and intent to include existing potential sites, and is not consistent with the rest of the language in (n) . This language ignores the premise that the original ECIP was just a starting point to be updated at the review of commencement of harvesting operations. Thus "if conditions have changed should be removed".

Additionally the language in (n) includes control language "attributable to timber operations". This language is inconsistent with the intent of AB 904 (and Cal Water Code). The language " "at-tributable to timber operations" should be removed. The ECIP must not be limited to just roads and landings and existing or potential sediment sources related solely to timber harvest activity.

Note: All erosion sites (anthropogenic and controllable - on the property included in the WFMP), existing and potential, are the responsibility of the landowner (supported by Cal Water Code and TMDL compliance necessity) must be made part of the updated ECIP - at time of notice of operations or in the original ECIP. The plan or the ECIP should include mapping (see below). Limiting inclusion of erosion sites that are outside of any area noticed to be harvested (NTO noticing) fails compliance with applicable water quality control plan and compliance with any approved TMDL for the pollutant sediment. Additionally, be aware that no WFMP (or any Timber Harvest Plan, NTMP, or Modified THP) may be approved without analysis of how that plan will comply with an approved TMDL. (also this is supported by language in the FPRs, CEQA, and Basin Plan language on controllable sources - included below).

It is important to be aware that limiting the ECIP updates to areas of timber operations can omit potential and active erosion sites in an ownership that should be noted and considered in an ECIP. And, in fact, it has been found that it is the case that such areas of erosion and erosion potential

have intentionally been left out of ECPs for NTMPs where the active logging areas failed to include consideration of erosion problems that must be considered in Basin Plan and TMDL compliance.

The discussion above indicates that it is essential to clarify the composition (essential elements) of the ECIP and how the ECIP is to be used to demonstrate compliance. The current language in the WFMP rule making is vague on this issue.

The language from 1094.8 (n) “certification from the RPF that no additional listings of water bodies 3 to Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313(d)) list have occurred on the 4 lands of the plan” is confusing. The intent of this language is unclear. All plans must comply with currently approved TMDLs (for pollutants sediment and temperature). A WFMP must notice existing TMDLs and demonstrate discussion of TMDL related issues in the plan area and how the plan will comply with the TMDL. The current language in the WFMP does not address this issue.

The language below – other existing language that needs clarification necessary to support compliance with AB – 904 and other State Code

Note: The Mgmt. Committee should be aware that currently NTMPs are subject to an ECP stand **alone document, that must be kept current, and is part of the plan. The WFMP language, to date, has not met that standard.**

(u) Mapping requirements

(4) (E) The location of significant existing and potential erosion sites on all roads and landings pursuant to 14 CCR § 923.1(e). **It should be made clear that all erosion sites must be mapped and added to the ECIP at time of Notice of operations**

(5) Location of proposed and existing landings outside the WLPZ that are greater than 20 1/4 acre in size or whose construction involves substantial excavation. What is Substantial excavation - Clarify? Does it need engineering.? If outside the plan (or not part of harvest activity) area is a SWPPP required for disturbance over and acre?

Finally, while the RPF is Certifying compliance there should be a certification of compliance with any existing TMDL for waters of the State in the WFMP ownership. In fact, to be consistent with CEQA and Cal Water Code every plan must have a discussion of how the plan is complying with current TMDLs. This can not be left out of the WFMP. (this issue was overlooked on the original WFMP submission).

Sincerely,

Alan Levine for Coast Action Group

Water Quality Standards (section – below – re-submitted from the March 20, 2015 comments – as language in the March 24, 2016 plead fails to address these issues)

Referencing the last sentence in the quoted section above and the plain language of 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 - all "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 estab-

lished 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).

How does the proposed language meet the intent stated in the legislation (above or below)?
Moreover – the current plead does not include the necessary elements for the ECIP – as required by the language and intent of AB – 904 and other State Code.

(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).

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.