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January 15, 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 for January 15, 2016 Working Forest Management Plan Workshop

Dear Chairmen Gilles and Board Members:

The Environmental Protection Information Center (EPIC) and Coast Action Group (CAG) submit these comments for your consideration at the Working Forest Management Plan January 15, 2016 workshop.

We understand that this workshop is intended to allow for work on issues raised by the Office of Administrative Law (OAL) in response to the staff's submission of the Working Forest Management Plan (WFMP) regulations on October 15, 2015, with focus on recommended language provisions as presented in the "draft regulatory rule plead" (hereinafter referenced as "draft plead") for changes to the WFMP regulations as already approved by the Board on June 17, 2015.

EPIC and CAG are on record as identifying the many serious failings of the WFMP regulations as approved by the Board. The draft plead fails to address most of these problems, and does not address substantive issues raised by OAL. Thus, the workshop scope seems short-sighted. We will not reiterate all the problems previously identified, as they are a matter of record which we believe the Board itself must consider and deal with if it is to act in accordance with AB 904 and governing laws. Here we present some governing principles we ask the Board to consider as it proceeds. We request that this letter and its attachment be made part of the administrative record for any future rulemaking which the Board may undertake.

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1

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The Board Must Adopt Regulations Which Fulfill and Are Consistent with AB 904 Intent and the Forest Practice Act

In enacting AB 904, the Legislature created a long-term management structure for conservation-minded non-industrial timberland owners who would agree to unevenaged management and operations which provide for sustained yield, with superior environmental protections. The legislative intent is embedded at Public Resources Code section 4597 (a)(3), which provides, “Building upon the model provided by the non-industrial 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 non-industrial working forest ownerships and acreages.” While the WFMP permitting structure created by AB 904 is intended to build upon, expand, and enhance the concept of the pre-existent Nonindustrial Timberland management Plan (NTMP) structure, it also enhances the NTMP structure to require rigorous inventory standards and accountability to provide proof that forest management conducted pursuant to an approved WFMP actually does provide for sustained yield.

Furthermore, in enacting AB 904, the Legislature required that the WFMP permitting program be developed and implemented in a manner consistent with other federal and state laws and directives, including the federal Clean Water Act and associated TMDLs, the Porter-Cologne Water Quality Control Act, the state and federal Endangered Species Acts, and of course, the California Environmental Quality Act and the Administrative Procedures Act. This is also consistent with the mandates of both the Forest Practice Act and Rules.

The Board has a statutory duty to properly implement AB 904, both under its requirements as well as under the existing provisions in the Forest Practice Act. The Board failed to perform its duties in approving the WFMP regulations on June 17, 2015. We believe the record before the Board at the time of its approval outlines these failings, and is further supported by documents created after the approval. The staff’s draft plead does not remedy the Board’s failure to properly implement AB 904. It fails to remedy the many defects already identified by EPIC, CAG and others, including CAL FIRE and other agencies. The staff’s draft plead does not address some of the substantive issues identified by OAL. This draft plead is little more than mere window-dressing, without actual language to remedy problems within the existing approved regulations. We urge the Board to undertake this rulemaking process with the utmost care and consideration, to ensure that long term management will enhance forest land resources in California.

In undertaking its responsibilities, we request that the Board consider and directly respond to the November 6, 2015 letter from former Department of Forestry and Fire Protection Director Richard Wilson. We provide a copy for your consideration and response. Director Wilson provides keen insights which the Board should adopt as it moves forward. Notably, 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.

This is the kind of information that is missing from the WFMP regulations, and that is sorely needed to properly implement AB 904. Director Wilson also articulates a fundamental understanding of the Forest Practice Act's guiding principle to achieve "maximum sustained yield of high quality timber products" (MSP). MSP requires that MSP does not allow reliance on mere minimum stocking standards. The WFMP regulations as approved by the Board fail to satisfy this core FPA requirement.

The Entire Board Must Take Responsibility for the Development of Proper WFMP Rules

A fundamental problem with the Board's June 17, 2015 approval of the WFMP regulations, followed by the staff's development of a post-hoc record and submission to OAL, is the manner in which the Board effectively abrogated its duties in favor of a singularly-lead committee process and post-hoc staff action. Consistent with its duties in the Forest Practice Act, the Board must take full responsibility in the development, review and adoption of any subsequent WFMP regulations.

The WFMP regulatory proposal adopted by the Board in June 2015 was completely developed within the narrow framework of the Board's Management Committee. That committee process single-handedly dismissed the concerns of review team agencies and the public in committee, and during Board deliberations on June 17, 2015. From our perspective, given the staff's decision to withdraw the rule package from OAL, and OAL's list of concerns, it seems clear that many concerns were not addressed.

Further, the Board significantly erred in allowing its staff to create a post-hoc process which added to your record for the June 17, 2015 adoption of the WFMP regulations. The Board has the duty to act based on a complete and final record; allowing the staff to assume core Board obligations is wrong. By not taking full responsibility for the entirety of the final rulemaking process, the Board as a whole abdicated its responsibilities, and facilitated the situation that now exists.

EPIC and CAG propose that the WFMP regulations, once rescinded, be returned to a joint Management and Forest Practices committee process, for further discussion, insight, consideration, and deliberation. We ask that in doing so, the Board ensure that its respective committee members do not have real or potential conflicts of interest presented by their employment or other circumstances, and are prepared to engage in a new transparent process to achieve development of WFMP regulations which adhere to AB 904, the Forest Practice Act and other laws. We note, for example, that in the past the Management Committee chair has had a propensity to ignore significant factors mandated in this process; we suggest that new leadership should govern this process. EPIC and CAG strongly encourage that the full Board actively engage to ensure that the WFMP regulations are adequate to meet the requirements of all other applicable laws; that agency and public concerns are adequately considered and addressed; and that the rules, if adopted again in the future, are promulgated pursuant to proper administrative procedure, environmental laws, and the FPA.

Recommendations

EPIC and CAG request that the Board do the following:

1. Immediately rescind the existing regulations as not being in compliance with the law.

2. Start anew a transparent and open process that complies with substantive and procedural laws.
3. Provide a joint committee process under the guidance of multiple Board members to give proper consideration to all concerns and facilitate an open process.
4. In the process, implement the wisdom provided by Director Wilson's in his November 6, 2015 letter, to guide fundamental core Forest Practice Act principles which must be guaranteed.
5. Ensure that previous concerns are addressed, changes are made, and action is taken consistent with all laws.
6. Throughout this process, all Board members should assume full control and responsibility for the rule-making process and take an active role in monitoring the rule development, consideration, and adoption process.

The WFMP regulations as approved do not ensure the attainment of unevenaged management, sustained yield, and superior environmental protections and public benefits required by AB 904. Substantial changes are needed to include real and rigorous timber inventory standards which ensure the attainment of the aforementioned objectives. This is of paramount importance for the Board if it intends to implement WFMP regulations in the 2017 calendar year.

Please do not hesitate to contact us should there be questions. We appreciate this opportunity to provide the Board with further comments on this matter.

Sincerely,



Rob DiPerna
Environmental Protection Information Center

Alan Levine



Coast Action Group

Attachment

Letter from Richard Wilson to Chairman J. Keith Gillless, re: Working Forest Management Plan Regulations. November 6, 2015.