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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,



Rob DiPerna
California Forest and Wildlife Advocate

Environmental Protection Information Center
145 G Street, Suite A
Arcata, California 95521
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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.



Keeping Northwest California wild since 1977

Sent via electronic mail to: publiccomments@bof.ca.gov on date shown below

June 15, 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, wildlife and fisheries, 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.

Environmental Protection Information Center
145 G Street Suite A Arcata, CA 95521
(707) 822-7711
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INTRODUCTION

EPIC believes good management planning can benefit resource protection, particularly if it defines long-term resource planning standards, identifies and evaluates landscape issues, provide mechanisms to remedy legacy and operational environmental impacts, and includes 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 it to be 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 ensure uneven aged management and sustainability, and 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 landowners 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(1), 4597.3, 4597.8, 4597.11(m), and 4597.12(b)). EPIC has previously provided comment on Board committee drafts of proposed WFMP regulations. From our review of this most recent proposal, it does not appear that the Board has made changes as suggested by EPIC, or addressed important issues which render the regulations vulnerable to challenge as not being in compliance with the Administrative Procedure Act or other laws. To secure the record on this lack of response, EPIC includes with this comment letter its previous comment letters date April 7, 2014 and March 2, 2015, which are incorporated by reference herein (**Attachments A and B**). EPIC has once again reviewed the entire rule package and provides these comments to identify its concerns.

One of EPIC’s primary concerns all along is the Board’s failure in previous drafts to provide actual interpretation and clarity of the statutes enacted pursuant to AB 904, and instead to simply restate much of the statutory language. It is clear from this most recent rule package that the Board proposes to adopt a rule package which relies extensively on the statutory language without interpretation and guidance for effective implementation. EPIC strongly disagrees with this approach, as it fails to provide the necessary guidance to ensure the legislative goals and

objectives. EPIC presented many examples of this in our earlier comments, which are incorporated by reference here. The Board's Initial Statement of Reasons ("ISOR") again 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 Procedure Act standards for clarity and consistency. In the absence of necessary guidance and interpretation, 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.

Underlying this regulatory effort is the reality that over one million acres of forest land may be eligible for and receive Working Forest Management Plan approval. According to the ISOR, "there are at least 81 landowners who would qualify under the new WFMP program." (ISOR, at p. 5). That represents an additional **1,214,999** acres that could be placed under the proposed lifetime plans. The Board estimates that of these 81, "at least 60 used even aged management (i.e. clear cutting) at some point." (*Id.*).

EPIC tried to identify the location of these 81 ownerships to evaluate their location and determine the potential for impact within differing forested areas and ecosystems. EPIC requested a copy of the source document(s) for this statement. In response, the Board staff provided legislative analyses which included the same statement as in the ISOR. In response to a follow-up request, Board staff provide a 2-page "NTMP Expansion Study" document issued by the California Department of Forestry and Fire Protection ("CAL FIRE: or "Department") which described CAL FIRE's process to identify WFMP eligible forestland in California, resulting in a map specifically identifying 80 potential landowners that could be eligible for a WFMP. When asked for this information, the Board could not provide it. EPIC has also asked CAL FIRE for this information through a Public Records Act Request ("PRA"), with no success as of this date. In personal communications with CAL FIRE's Dennis Hall about our request, Mr. Hall indicated that CAL FIRE did not have a responsive document behind the statement; rather, Mr. Hall indicated that the "analysis" was done via a GIS database query, stating that all that the Department could give us was its entire GIS database. In its June 9, 2015 written response to our PRA, the Department stated it would not respond to the PRA until June 25, 2015 as responsive documents were not located at the CAL FIRE Sacramento Headquarters.

This denial of access to information informing these rules has frustrated EPIC's ability to fully evaluate the impact of these proposed regulations. EPIC needs to know the location of the potential 1.2 million acres of forestland that could be eligible for WFMP in order to evaluate the potential for impacts on ecological areas and habitats not evaluated in the proposed regulations or the ISOR. It is imperative that the Legislative intent be fully and accurately implemented in a manner that protects timberland and other natural resources.

These comments focus on core issues which EPIC requests be responded to with changes in the proposed regulations, before the Board may act to approve WFMP regulations. 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 uneven aged management and monitoring. The proposed regulations do not require uneven aged management over time. 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 before the Board takes action on the proposed rules, it 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 non-duplication. (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)). The proposed rules do not meet these standards.

The Board's rulemaking must meet the standards of the Forest Practice Act, including AB 904, the legislation which enacted the Working Forest Management Plan provisions codified in the Forest Practice Act as Public Resources Code sections 4597 - 4597.22. 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). 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)). The proposed rules are not in compliance with the Forest Practice Act governing goals because they lack necessary standards and clarity.

The Board must follow the California Environmental Quality Act ("CEQA") in the review and approval of regulations. 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)).

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).

The proposed regulations fail to satisfy these legal standards. The ISOR and the proposed rules do not provide adequate standards to evaluate significant adverse individual and 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.

In addition, the APA requires the agency to consider all relevant matters presented to it before adopting regulations. (Gov’t Code § 11346.8). Despite this clear obligation, the Board’s Notice of Proposed Action advises that the Board will not consider any oral comments presented at the scheduled June 17 hearing. The notice advises that “[a]t the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action. The Board requests, *but does not require*, that persons who make oral comments at the hearing also submit a summary of their statements.” (Notice, at p. 1). (Emphasis added). The Notice then states that the “Board *will consider only written comments* received at the Board office by that time and those written comments received at the public hearing, including written comments submitted in connection with oral testimony at the public hearing.” (Notice, at p. 2). (Emphasis added). In this way, the Notice advises that oral statements given at the public hearing will not be considered by the Board. This violates the APA and eviscerates the fundamental purpose and function of the public hearing for rule making.

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 (g)), or “inventory design and timber stratification criteria” to support growth and yield calculations used to determine LTSY, (subsection (h)), these provisions do not provide any actual standard, much less “rigorous” timber inventory standards, that must be satisfied. In doing a search of the entire proposed rule package, there is not one reference to “inventory standard,” or “timber inventory.” The rules fail to meet the required APA necessity and consistency standards because they do not include “rigorous timber inventory standards.”

The proposed rules 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.

AB 904 expressly requires that a WFMP include the objective of “maintaining, restoring or creating uneven aged managed timber stand conditions,” PRC § 4597.1 (j), and that a WFMP may be submitted only by a landowner “with the long-term objective of an uneven aged timber stand ... through the implementation of the [WFMP].” (PRC § 4597.2). Yet, the proposed rules do not include any requirement that the landowner state or commit to the objective of uneven aged management. Nor does the proposed rule package require an express statement and identification for uneven aged management. Instead, 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 undefined landowner management objectives. Introducing this ambiguous provision to guide the WFMP, while failing to provide the statutory “rigorous timber inventory standards,” and regulations to require implementation of the stated objective of uneven aged management, is contrary to the statute and not authorized. As such, it violates the APA. The proposed regulations place no limits on or definition of 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. As noted above, there is no 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. 5), yet the rules themselves do not require uneven aged management over time, into the future, or upon realization of the (unstated) LTSY, much less incentives to use uneven aged management. As such they do not satisfy the intent and purpose of AB 904, e.g., to provide “increased productivity of timberland” and to be a plan to 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, at least for 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 means 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. 121). This conclusion is insufficient because it is not based on substantial evidence. There is the potential for actual harm due to the lack of “rigorous timber inventory standards,” express articulation of landowner objectives, clear statement of LTSY, stated measures and commitment to 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 ISOR fails to consider or evaluate this potential under CEQA.

The proposed rules and the ISOR do not include 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 evaluate 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. 121). 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 currently listed as threatened or endangered that are well-known to be in decline based on the best available science and research. Based on this evidence, these species may be significantly adversely affected by the lack of adequate standards and mitigations in the proposed rules. Yet the ISOR fails to consider and evaluate the potential for significant adverse impact on these species. 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 documents

declines in reproduction, apparent survival, and overall populations in most study areas. (Forsman et al. 2011, “Population Demography of the northern spotted owls: 1985-2008” (“Forsman et al. 2011”). (**Attachment C**). This study 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). Yet the proposed rule package, in the absence of necessary standards, would permit logging in ways that are harmful to this species.

EPIC specifically objects to the use of existing Rule 919.9(g) [939.9(g)] within a WFMP. CAL FIRE admits that so-called “Option-(g)” under Rule 919.9 [939.9] is inadequate to protect the NSO. At the March 6, 2013 Board hearing, CAL FIRE Deputy Director Duane Shintaku declared the insufficiency of Rule 919.9 (g) to prevent “take” of the NSO:

"[F]rankly, the Department recognizes that frankly Ken knows we have been working with him prior to retirement in the Service and we have recognized the problems with option-g for quite some time and even before we were handed the full brunt of the responsibility back in 2008 we had heard from the service that option-g was really not adequate. So where did that leave the Department?...there were really just two options....We were really just relying on option-e, the other option that allowed people to avoid take through an HCP and the third was option-g so for quite some time the boards rules with respect 919 and NSO have been outdated, and if you think about it they have been around for 20 years and it's no big mystery that the science has informed what owls need across the landscape.... so first of all CAL FIRE agrees with EPIC in terms of the obsolete nature of option-(g).... so really where we are today is what we are call g+.... what that means is we recognize g is not going to get it done, but the rules specifically say an RPF only has the choices (a)-(g) in order to address a spotted owl in a THP, so because the RPF has to say I am using option-(g)—coupled with the fact that we know option-g is obsolete—that forces the Department into what I would consider a full-blown CEQA analysis. We have to make sure that significant impacts, cumulative impacts and take are all addressed in the plan, and we just use the (g) vehicle to get that done. What does that mean? It means that most of the plans... in which the RPF says I am using option-(g), do not rely on the minimums in the rule today. What that generally means is that they look at the most recent Fish and Wildlife Service guidance and take that high quality nesting/roosting/foraging and the parameters, distances, operating periods incorporated into the plan ...if the only remaining option is option-e.... that creates a huge problem for the plan preparing RPF as well as the Department.” (Shintaku 2013, Testimony before Board of Forestry, March 2013). (**Attachment D**).

Extending the use of a regulation which is ineffective to prevent illegal take of the NSO is contrary to the statutory function of the WFMP to promote forestland stewardship that protects wildlife habitats.

Anadromous salmonid species in California, particularly in coastal watersheds, are similarly in peril. For example, the National Marine Fisheries Service's (“NMFS”) has documented that of the literally thousands of Coho, which once returned to Northern California and Southern Oregon rivers and streams, today have over three quarters of SONCC Coho salmon independent populations at high risk of extinction. (“Final Recovery Plan for the Southern Oregon/Northern California (“SONCC”) Evolutionary Significant Unit (“ESU”) of Coho Salmon” (“NMFS 2014” or “Recovery Plan”), at p. E-2). (**Attachment E**). This 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 Board meetings and expressed concern to the Board 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 remedied. The NOAA Fisheries Service expressed this to the Board in a letter dated September 8, 2009:

“For the last 10 years, NMFS representatives have been recommending to the BOF develop either no-take rules (e.g., similar to those for federally listed northern spotted owl and marbled murrelet) or move forward on the development of a section 10(a)(1)(B) statewide permit (e.g. Habitat Conservation Plan [HCP]) that authorizes incidental take of listed salmonid species...However, NMFS finds that the proposed Anadromous Salmonid Protection Rules are not no-take rules, and are unlikely to meet the intent of the rules themselves and are not likely to abate the risk of extinction for listed salmonids where these Rules are implemented.” (NOAA Fisheries letter to Stan Dixon, California Board of Forestry 9/8/09). (**Attachment F**).

While the proposed rules implicitly indicate the WFMP must comply with Technical Rule Addendum No. 2 for evaluation of cumulative impacts, this is insufficient because the existing Addendum No. 2 fails to adequately evaluate cumulative impacts to anadromous salmonids. While the Board 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. The ISOR should have discussed the Board’s related rulemaking project to amend Technical Rule Addendum No. 2 and what effects it could have on the WFMP requirement for cumulative impacts assessment.

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 Draft 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. (U.S. Fish and Wildlife Service, 2014b, “Draft Species Report Fisher (*Pekania pennant*), West Coast Population, January 13, 2014,” at p. 55). (**Attachment G**). The proposed WFMP rules do not attend to the need to prevent loss important habitat components for this species, and the ISOR fails to discuss this as a potential significant adverse environmental effect.

Finally, past and contemporary forest management has had a devastating impact on the federal-threatened and state-endangered Marbled Murrelet. The most recent science indicates that there is an estimated 13 percent loss of the higher suitability habitat over baseline during the period from 1994 to 2008. (Raphael et al. (2011). “Northwest Forest Plan—the first 15 years (1994–2008): status and trend of nesting habitat for the marbled murrelet” (“Raphael et al. 2011)). (**Attachment H**). Fire has been the major cause of loss of nesting habitat on federal land since the Northwest Forest 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, actually require consideration of the potentially significant adverse individual or cumulative effects of forest management activities to be permitted in perpetuity 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.

The proposed rules also do not contain adequate safeguards or standards to ensure the “maintenance of ecological processes and services” as required by the enacted statute. In particular, there is a lack of adequate standards to require adequate description and evaluation of pre-existing conditions, most notably watercourse conditions. 14 CCR 916.4 articulates a detailed information-gathering requirement for RPFs to utilize in describing and evaluating pre-existing conditions. However, the proposed regulations fail to articulate meaningful standards for disclosure of the information gathered pursuant to the evaluation conducted under 14 CCR 916.4, and fail to articulate measures to be taken to address pre-existing and legacy conditions identified as a result of the analysis. The WFMP is an “in-perpetuity” plan, and as such, the implementing regulations must contain adequate requirements not only for evaluating, but also for addressing pre-existing, legacy, and ongoing impacts. Lacking these safeguards, these regulations have the potential to result in a significant adverse impact on the environment. Moreover, the ISOR fails to evaluate the potential for significant adverse impact to ecological processes and services due to the lack of adequate standards, as required by CEQA for Board rulemaking.

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

The proposed regulations lack clarity and consistency because they fail 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, terms used in the proposed rules which have not been defined, and are not clear in their use, include:

- “forestland stewardship” (1094.2(l), 1094.3);
- “management objectives of the landowner(s)” (1094.6);
- “baseline conditions” (1094.6(g)(1));
- “timber volumes” (1094.6(i));
- “similar requirements” (1094.6(j) OPTION 2);
- “LTSY plan” (1094.6 (n)(1));
- “addresses” (1094.6(o));
- “necessary deviations” (1094.8);
- “physical environmental changes” (1094.8(i));
- “significant changes” (1094.16(d)(1)); and
- “proprietary information” (1094.29(g)).

All of these terms require definition 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 is not readily defined or determined. The ISOR fails to identify or evaluate the potential significant adverse impact from these undefined terms. 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. There are key substantive provisions which must be changed and amended before the proposed rules can be adopted to be in compliance with the law. EPIC requests that the Board consider and respond to each of these items before it takes final action to adopt proposed WFMP rules.

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 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 these provisions as 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 reiterate, a major flaw in the proposed rules is the failure to require an express statement from the landowner, in the WFMP or otherwise, of the objective commitment to long term sustained yield and uneven aged management. The failure to require an express statement to show how uneven aged management over time will be used and implemented is a flaw. In addition, the following subsections are insufficient and require changes, as recommended here.

Subsection (g) 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. It is unclear whether the determination of LTSY depends on merely an estimate, unknown at the time of WFMP approval, or something more. The regulations need to identify the controls in place to ensure the WFMP commitment 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 or to require a stated commitment to uneven aged management over time. This subsection must be clarified to have meaning, and provide better standards to specify LTSY and uneven aged management. 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, sustainability, or protection of resources – in violation

of the APA as well as the Forest Practice Act. The ISOR fails to discuss or evaluate the potential for significant adverse impacts to resources from this lack of definition and controls.

Subsection (h) 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.” Because “volume” is never defined, the term “LTSY by volume” lacks necessary clarity. Volume can be Scribner volume, board foot or cubic volume, or basal area volume. The volume measurement must be clarified to provide uniformity in determining LTSY.

Subsection (h) also provides three “minimum standards” which must be satisfied in the required description of inventory criteria. Subsection (3) 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 requires that the LTSY projections 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 as required by CEQA. These provisions must be fully defined and interpreted so as to protect timber and natural resources, and provision must be made to evaluate the potential impacts from such aggregating of areas.

Subsection (i) 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 (i) 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 is needed to monitor the volume and tree size projections over time. A realistic time frame must be established for these projections, at the end of which the WFMP must be reviewed for conformance to those projections.

Subsection (i) 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 (n) 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 LTSY or 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 (q) requires the WFMP to describe “a future schedule of inventory sampling and analysis of LTSY.” It appears – though not specifically stated – that this is intended to provide a schedule to update inventory sampling and LTSY analysis. There is no requirement here, or elsewhere, that specifies the *time frame* for a future 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 monitored and achieved. 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 the required objective for uneven aged management and sustainability - is being achieved. Absent this, the subsection undermines and obfuscates the legislative directive and threatens ecological processes.

For each of these provisions, the ISOR fails to evaluate the potential for significant adverse impact on resources as a consequence of ambiguity, lack of clarity, and failure to implement the statute.

2. Water Quality Protection

Subsection (j) provides two options – one which requires submission of an erosion control implementation plan with “information” as required by 14 CCR § 923.1 (e) – and a second option which requires description of “methods” to be used to avoid significant sediment discharge to watercourses from timber operations. Option 1 is insufficient to ensure protection of potential erosion sites, as section 923.1 (e) sets forth only operation standards for roads and landings, rather than identifying measures to be implemented to ensure erosion control for all operations. Option 2 does provide more disclosure as to what shall be done to avoid erosion from all timber operations (rather than just roads and landings), but 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. 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

The proposed rules fail to require documentation that the WFMP landowner has conducted surveys or searches for protected wildlife, plant and other vulnerable species. Subsection (m) 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)). An actual investigation using applicable protocol surveys to determine the *presence* of protected and listed species or their habitat is necessary to ensure that the WFMP satisfies the legislative intent to not cause adverse impacts to protected and listed species.

Subsection (o) requires an assessment for LTSY projections projecting a reduction in trees greater than 12 inches dbh or reduced inventories of Major Stand Types or for a percentage of Stands or Strata, 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 reduced as described, then the regulation must provide standards to ensure protection. In the absence of having to actually look for species, merely “addressing” these vulnerable species is not sufficient. To satisfy legislative intent, the proposed rules need a standard to credibly evaluate potential impacts from reduced tree and stand size; otherwise, 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.

It is well established that 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 (r) suffers from the same inadequacy as the subsection 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, and the ISOR should evaluate the potential for significant adverse impact on the environment if this information is not required.

5. Lack of Cumulative Impacts Analysis in WFMP

Subsection (x) is confusing because it simply requires the WFMP to include a “description of” the cumulative impacts analysis, whereas section 898 requires that a plan include a cumulative impacts assessment using Technical Rule Addendum No. 2 methodology. (14 CCR §§ 898, 912.9). A full cumulative impacts assessment must be included in the WFMP, as required by the Forest Practice Rules and CEQA; any requirement less than that violates the Forest Practice Act and CEQA.

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

Subsections (z), (aa), and (cc) through (ff) 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(s) 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 in perpetuity 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 exceptions are contrary to the APA standards for necessity, consistency and clarity, and have not been properly evaluated in the ISOR or within the WFMP, as required by CEQA. They pose the risk, over time, of causing significant adverse environmental effects. As permanent

standards, they 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 development of so-called “standard operating practice(s)” for two of these exceptions: for tractor operations on steep and unstable slopes and lands, and for use of landings, logging roads, and skid trails in protected watercourse zones. 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. CEQA requires mitigation to remedy significant environmental impacts. If there is a need for mitigation, there is a need for CEQA review. This process is contrary to the APA, Forest Practice Act, 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, certain terms in the proposed rule for the WFMP Notice are not defined. The proposed annual Notice also does not include a requirement for information documenting what operations have already occurred under the WFMP, or identifying 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 scheduled for harvest. This information is necessary to document 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 proposed subsection (m) 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 scheduled for harvest, in relation to the WFMP projections, and evidence documenting efforts to achieve the LTSY.

For wildlife and protected species, subsection (h) requires review of only public sources and databases to report whether there are any “known” occurrences of these species. There is no obligation to conduct protocol surveys or other investigation to look for these protected wildlife and plant 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 (g) 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 (i) 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 does not define what is meant by “physical environmental changes” and what that phrase 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. The failure to require this kind of investigation leaves the real potential for significant adverse impact on protected species or archaeological and cultural sites, an eventuality that is not mentioned or evaluated in the ISOR.

For water quality protection, subsection (n), like other provisions, does not require any actual evidence upon which conclusions as to *current* conditions are based. The mapping requirement under proposed subsection (u)(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 (t) requires description of the WFMP exceptions which have “standard operating practices,” but fails to require identification of the site-specific locations for which these standard operating practices may occur. This means the potential for significant adverse environmental impact is never evaluated as required by the FPA and CEQA.

The proposed Notice regulation does not require a statement disclosing whether there are any ongoing operations in the WFMP area, even though the proposed rules permit operations to occur beyond a one-year time frame. (*See* Proposed rule 1094.25(b) (report may be filed annually for work not completed)). 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. The ISOR does not mention or evaluate the potential for significant adverse environmental impacts which may occur due to the multiple year operations.

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

Proposed rule 1094.23 specifies a number of circumstances which are “presumed to be “substantial deviations”” of the WFMP. However, subsection (c)(14) then states that changes to an erosion control implementation plan as a result of operations to implement the provisions of an approved erosion control plan “shall not be considered a substantial deviation.” This makes no sense and does not belong.

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 as set forth in 14 CCR section 1071, rather than require an increase in productivity over time. To “increase productivity” means to require a standard higher than merely “maintaining” minimum stocking standards. Use of minimum stocking does not effectuate the legislative purpose of the WFMP. Moreover, the proposed rules permit stocking reports to be filed within 5 years, in which case that information will not be subject to the proposed 5-Year Review. This will not “benefit” the environment, and has the potential to degrade the environment by not doing as contemplated by the Legislature – to increase timberland productivity and utilized uneven aged management. Furthermore, the proposed rules do not include an affirmative obligation to conduct effective annual monitoring to keep track of what timber operations occur each year, what volumes were removed and what volumes may be cut going forward, and to determine whether the growth and yield projections are accurate or need adjusting to maintain LTSY. The ISOR fails to mention or evaluate the potential for significant adverse impacts from not requiring heightened stocking standards to ensure increased productivity over time.

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 what constitutes the “5-Year Review.” The Legislature directed the board to adopt regulations to implement the statute section 4597.12, and the proposed regulation fails to meet this duty, satisfy APA standards of clarity, or ensure CEQA compliance.

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). In addition, the statute requires the Department to provide notice of the review and copy of the 5-Year Summary to the public so that the “public may submit additional information relevant to the purpose of the five-year review and the review team may consider this

information when conducting its review.” (PRC § 4597.12(c)). Proposed rule 1094.29 makes a mishmash of this clear process, obfuscating when the 5-year Summary is done in relation to the 5-Year Review, as well as the public’s right of review and comment. As such, it fails to meet the APA standards for clarity and is contrary to the authorizing legislation.

The proposed rule places the public notice and comment period before issuance or completion of the 5-Year Summary and 5-Year Review, by requiring the public notice “*at least 30 days prior to each five (5) year anniversary date of the WFMP approval*” and public notice to be submitted “*during the thirty (30) day period.*” (Proposed rule 1094.29(a)). (Emphasis added). Subsection (b) only requires preparation of the 5-Year Summary “*within thirty (30) days of each five year anniversary of a WFMP approval.*” (Emphasis added). By allowing the 5-Year Summary to be prepared “within 30 days” of the anniversary date, the Department can prepare the 5-Year Summary (and convene the review meeting) within 30 days *before* **or** 30 days *after* the anniversary date. This deprives the public of its right of review as provided in the statute, forcing the public to comment in a vacuum before the Summary or Review may even be conducted. The public must be given an adequate period of review for the 5-Year Summary, to provide input into what information the review team agencies and the Department need to consider in conducting the 5-Year Review. In addition to AB 904, both the FPA and CEQA require that the public is entitled to review and comment on whatever document encompasses the 5-Year Review.

The rules are not clear as to what is to be included in the “summary” preceding the 5-Year Review, or what constitutes and shall be included in the 5-Year Review. If the 5-Year 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). This is also needed for the public agency review process.

It is unclear what information is required to be included in either the 5-Year Summary or the 5-Year Review. It is not clear whether a 5-Year Summary or 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.” (Proposed rule 1094.29(c)). The proposed rule needs to identify what is to be included in the 5-Year Summary and 5-Year Review. The proposed rule needs to specifically identify what information must be reviewed by the review team and be made equally available for public review and comment.

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.” This is needed to make the provision meaningful. And as discussed above, because the public is effectively denied a right of review and comment, it is given no meaningful way to provide a “fair argument” as to potential impacts. Moreover, 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 meaningful public review and comment.

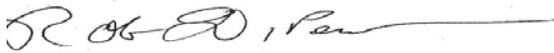
Subsection (g) is a restatement of the subsection (d) of the statute. (PRC § 4597.12 (d)). However, it conflicts with other provisions of the statutory scheme and proposed rules. The WFMP “shall be a public record.” (PRC § 4597.2; proposed rule 1094.3). That means all the information identified in proposed 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. Yet, proposed subsection (g) authorizes a WFMP landowner to withhold “proprietary information.” Permitting a landowner to not disclose *undefined* information of its choosing, in the face of a public record and 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 a commitment to uneven aged management, LTSY, sustainability, and are inadequate to provide for wildlife and water quality protection and enhancement. The ISOR fails to satisfy CEQA and the Board rules governing its CEQA duties for rulemaking, because it fails to identify or evaluate the potential for significant adverse impacts arising from the many issues identified above. EPIC therefore recommends that the proposed WFMP implementing rules be remanded back to the Management Committee for additional work to correct 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,



Rob DiPerna
California Forest and Wildlife Advocate

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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: EPIC Letter regarding WFMP 45-day Notice. March 2, 2015.

Attachment C: 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 D: Shintaku 2013. Testimony before Board of Forestry. March 2013.

Attachment E: 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 F: NOAA Fisheries 2009. Letter to Mr. Stan Dixon, Chairman Board of Forestry and Fire Protection. September 9, 2009.

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

Attachment H: 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.



Keeping Northwest California wild since 1977

Sent via e-mail to george.gentry@fire.ca.gov on date shown below

April 7th, 2014

Mr. Stuart Farber, Chair
Management Committee
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244

Re: EPIC comments regarding proposed regulatory language for implementation of Assembly Bill 904 “Working Forest Management Plan”

Dear Chairman Farber and Committee Members:

The Environmental Protection Information Center (EPIC) has reviewed a “February 17, 2014 Draft” set of regulations for the “Working Forest Management Plan,” hereinafter referred to as “Draft Regulations.” We believe it is important that the implementing regulations provide an adequate structure for AB 904’s goal to ensure long term benefits and require rigorous timber inventory standards for non-industrial landowners who may choose to develop the “Working Forest Management Plan” (WFMP). In an effort to assist in achieving the legislation’s intent, EPIC provides the following comments and suggestions for development of regulations to implement AB 904.

It is equally important that the implementing regulations provide for documentation of conditions in a manner that is consistent with common & current professional practice and organization for planning documents. This includes documentation of conditions and recovery measures necessary for compliance with the laws which AB 904 identifies as requiring compliance, including CESA, CEQA and Porter-Cologne Water Quality Act.

I. Legislative Intent Must Guide Development of Regulations.

The WFMP is intended “[t]o ensure *long-term benefits* such as *added carbon sequestration*, local and regional employment and economic activity, *sustainable production of*

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timber and other forest products, aesthetics, and the maintenance of ecosystem processes and services,” and thus “shall comply with *rigorous timber inventory standards* that are subject to periodic review and verification.” PRC § 4597(a) (5), emphasis added. The Legislature specifically requires that the governance of the WFMP “shall be implemented in a manner that complies with the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with [Section 51100](#)) of [Division 1 of Title 5 of the Government Code](#)), the California Environmental Quality Act (Division 13 (commencing with [Section 21000](#)) of the [Public Resources Code](#)), the Porter Cologne Water Quality Control Act (Division 7 (commencing with [Section 13000](#)) of the [Water Code](#)), and the California Endangered Species Act (Chapter 1.5 (commencing with [Section 2050](#)) of the [Fish and Game Code](#)).” *Id.* (b). These important requirements are not included in the NTMP statute. *See* PRC § 4593.

AB 904 authorizes the Board of Forestry to not only adopt regulations for specific sections, but also to adopt any regulations “needed to implement this article . . .” PRC § 4597.20. It is therefore very important to develop provisions which implement the WFMP statute, and are not largely only a regurgitation of the existing NTMP regulations, as they would be insufficient to implement the statute.

Our comments first identify the statutory provisions which require interpretation and guidance and how in our view the Draft Regulations have or have not provided this interpretation and guidance. We then provide a review of specific provisions of the Draft Regulations which have not already been addressed.

II. AB 904 Statutory Provisions Require Interpretation and Guidance.

Section 4597 (a)(5) - Legislative intent

The statute provides that to “ensure long-term benefits,” such as “added carbon sequestration,” “sustainable production of timber and other forest products,” and the “maintenance of ecosystem processes and services,” the working forest management landowner “shall comply with rigorous timber inventory standards that are subject to periodic review and certification.”

Regulation is needed to identify and/or provide these “rigorous standards.” While some of the content of the statute (i.e., § 4597.2(c)) may be viewed as providing standards, even if fully adopted as regulation, they do not provide sufficient guidance and interpretation.

It is not clear whether Draft Regulations section 1094.6 subsection (d) is intended to provide these “rigorous standards.” As an initial matter, the Draft Regulations are unclear and/or wrongly formatted, as there is a subsection (d) on page 5 and another on page 6. The subsection (d) on page 6 appears to be the intended version. This version suffers from ambiguity, in that while it requires a “description of the plan area within which timber operations are to be conducted,” it then lists numerous items that go beyond a description of the plan area, requiring information as to what activities, operations, and measures are proposed, rather than the required description of the plan area. It would make better sense to require first a description of the plan

area, and then separately provide the requirements to identify the proposed activities, operations, methods, etc.

Separate from these concerns, however, is the failure to adequately bring forward the intent of Public Resources Code Section 4597. The “rigorous timber inventory standards” need to be defined and identified as such, and provisions must be included to ensure their “periodic review and certification.” PRC § 4597(a)(5). The Legislature provided some guidance as to what are relevant standards. PRC § 4597.2(c). These too require interpretation and effective regulation. We believe the Draft Regulations need to establish rigorous and enforceable standards.

In providing this guidance, it is important that the maintenance of ecosystem processes and services includes provisions that adequately describe those processes and services and their maintenance in the context of the 14 CCR 916(b) , as well as the Porter-Cologne definition of Water Quality Control: “. . . protection and correction of water pollution and nuisance.” A comprehensive description of the plan area is key. Mandatory compliance with 14 CCR 916.4 is necessary.

Section 4597.1 - Definitions

AB 904 did not define what it meant by “long-term benefits” such as “sustained production of timber and other forest products,” “added carbon sequestration,” “ecosystem processes,” and “ecosystem services.” The Board needs to give definition to and provide parameters for these terms if the objectives are to be satisfied, as they are at the heart of the WFMP.

In addition, the definition of “sustained yield” provided in the Draft Regulations section 1094.3 should be amended to address the use of the word “commercial.” It is unclear what that term means; it is clear that the WFMP is limited to non-industrial timberlands. At a minimum, the definition should refer to “non-industrial commercial timberland.” We note that the definition of “sustained yield” is not a substitute for a definition of “sustained production of timber and other forest products.”

Section 4597.2 - WFMP Contents

As a general comment, the Draft Regulations section 1094.6, identifying the WFMP content, in large part either use the same provisions as in the NTMP content regulations, or simply restate the language in Public Resources Code Section 4597.2 in defining the WFMP content. As the NTMP is a different kind of plan, which does not require all of the rigorous standards as in the WFMP, incorporating some of the NTMP provisions may be confusing and inaccurate. We note those below, as appropriate, when discussing specific sections.

And while there is nothing inherently incorrect with merely restating the legislation, the Board as the regulatory body is duty bound to provide adequate interpretation and clarity in order to ensure that the Legislative objectives are satisfied. This is why the Legislature gave the Board

the right to adopt any regulations “needed to implement” AB 904. There are certain areas in particular where this interpretation is needed, as discussed herein.

Overall, the format and accessibility of a WFMP is key. It should include a table of contents, and be readily accessible through internet

Long-term sustained yield estimate and/or plan.

The statute requires information used to “determine long-term sustained yield” (subsection (c), (c)(3)), and refers to (1) “long-term sustained yield estimates” (subsection (c)(3)), (2) “long-term sustained yield projections” (subsection (i)(2)(A)), and (3) a “long-term sustained yield plan” (subsection (i)(1)(A)). While the statute does not then expressly require a “long-term sustained yield estimate” or “long-term sustained yield plan,” it surely is implied that a proposed “long-term sustained yield” will be provided, and that the WFMP will include a “long-term sustained yield plan.” The Draft Regulations do not provide this, and perpetuate the confusion by simply repeating the language of the statute. *Compare* PRC § 4597.2(c), (f), (i)(A) with Draft Regulations § 1094.6(d)(6), (9), (13). We do not find in the Draft Regulations, for example, an express requirement in section 1094.6 to even identify the “long term sustained yield.” This must be required, and based on the language in AB 904 Section 4597.2 a WFMP must include a “long term sustained yield plan.” The Board needs to adopt regulations to implement this requirement. Absent this, there is no real way to verify compliance over time.

Impacts to species and species habitat.

The statute requires the WFMP’s “long-term sustained yield projections” to include an “assessment” which “addresses” listed and other species that could be adversely impacted by potential changes to habitat (subsection (i)(2)(C)(i)), species habitat needs (subsection (i)(2)(C)(ii)), and constraints to timber management etc. (subsection (i)(2)(C)(iii)). Regulations are needed to interpret what is meant by an “assessment” and “address[ing]” these resources and potential impacts. For example, how is the WFMP to “address” these resources; what standards are to be applied; what criteria? Unfortunately, the Draft Regulations provide no insight or interpretation, as they merely adopt the statute’s language. *Compare* PRC § 4597.2(i)(2)(A) with Draft Regulations § 1094.6(d)(15). Regulations are needed to make clear what is required and what standards will apply to the assessment.

Similarly, subsection (i)(2)(C)(iii) refers to the “cumulative impacts assessment,” yet it is not specifically required by the statute and the Draft Regulations simply adopt the statute’s language. A cumulative impacts assessment should be and needs to be expressly required – with its measurable required contents. Mere reference to the term “plan” at the outset of the Draft Regulations is insufficient to impose this requirement. The cumulative impacts assessment is required because the language in Draft Regulations section 1094.6(d)(12) requires disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the “biological assessment area.” Presumably, that is intended to refer to a biological assessment area within a cumulative impacts analysis, but absent an express requirement for such an analysis, that term is unclear.

4597.6 - Review Process for WFMP.

There are provisions within this statute which need regulatory interpretation.

Initial Inspection.

Subsection (b)(2), while somewhat in-artfully written, does require an initial inspection. The Draft Regulations simply adopt its language, § 1094.18(d)(2), without providing any guidance as to the scheduling of the initial inspection in a manner that involves all public agencies who have expressed a desire to participate in the inspection. This is needed to ensure that adequate review team agency participation and review occurs.

Appeal of denial.

Subsection (c) refers to the right to a “hearing” before the Board of Forestry, should a WFMP be denied.

Subsection (e)(1) refers to the ability of the working forest landowner to request, and the Board to conduct, a public hearing when the WFMP has been denied. Subsection (e)(4) then refers to an “appeal to the board.”

The Draft Regulations use this same language. §§ 1094.18(e)(1)-(h). These provisions are confusing at best. Does the landowner have a right of appeal, or merely a right to request a hearing? This is clearly an area where the Legislature needs the Board’s assistance to interpret the statute and make it clear, to clarify and make consistent that the landowner’s right to a hearing is a right of “appeal” which includes the public hearing.

Subsection (c) also provides that if the director denies the WFMP, s/he shall “state the reasons” for the denial. Subsection (e)(3) provides that if the Board overturns the director’s denial, it shall prepare “findings and its rationale” for overturning the decision. Again, the Draft Regulations simply adopt this language, failing to provide consistency and transparency for these decisions, by requiring that the director adopt “findings and rationale.” Draft Regulations § 1094.18(e), (g). In addition, EPIC believes it is necessary that both the director’s findings and the Board’s findings are issued publicly and made available in the same manner that all the other notices are posted.

Subsection (e)(4) provides that if the WFMP denial is upheld, then the director shall notify the landowner as to what changes are needed. The Draft Regulations provide nothing further. § 1094.18(h). Regulation is needed to require findings by the Board of Forestry to identify any reasons it may have, in addition to or different from those provided by the director’s statement of reasons (findings and rationale) that may become clear as a result of the appeal and public hearing process.

Regulation is also needed to clarify the process for a post-appeal review including provisions for a post-appeal inspection should it become necessary and for inter-agency review.

4597.7 - Substantial deviations

This section specifically requires the Board to define actions that would be considered to “substantially deviate[]” from the approved WFMP. Draft Regulations section 1094.15(b) provides the same definition of “substantial deviation” as in 14 CCR § 895.1. EPIC believes that more thought needs to be given to this section, to include criteria to identify substantial changes to the core provisions of AB 904 such as the rigorous timber inventory standards and LTSY, as well as the need for increased carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

4597.8 - Non substantial deviations

This section specifically requires the Board to “specify, by regulation, those nonsubstantial deviations that may be taken.” The Draft Regulation section 1094.15(a) appears to be nothing more than what already exists in the NTMP regulation 1090.14(a). This is insufficient, as the WFMP is intended to be much more rigorous than the NTMP, particularly given its very large acreage of up to 15,000 acres. A clear standard must be used to define what is insignificant, so as to not seriously affect the key objectives of a WFMP. Section 1094.15(a) is unclear as well, failing to define or provide standards for what may be “minor in scope” and what may be presumed to be “reasonable.” Better regulation is needed to limit the potential for abuse of so-called “minor” deviations.

4597.10 and 4597.16 - Cancellation/Termination of WFMP

This section authorizes the landowner to cancel the WFMP, but provides no process by which that is to occur, other than through a written notice. Draft Regulations section 1094.28 adopts this language, without providing interpretation or guidance as to what kind of notice is provided, whether it must be circulated by the Department for review, whether other agencies and/or the public are entitled to receive this notice for the purpose of ensuring compliance with “rigorous timber inventory standards,” adopted commitments for sustainability, ecosystem maintenance, added carbon sequestration, wildlife protection, etc. Since the overall legislative intent is to ensure long-term benefits and verification of WFMP provisions, a regulatory process must be adopted to provide this in the event a landowner wants to cancel the WFMP. It is insufficient to simply allow for satisfactory completion of any given notice of operations.

Subsection (a) of section 1094.28 adopts the language of AB 904 Section 4597.16. Just as regulations are needed to define a process for landowner cancellation, so too regulations are needed to define what standards and process CalFire may use to cancel a WFMP. This process must include criteria to evaluate the WFMP in conjunction with the rigorous inventory standards and other objectives which the WFMP is intended to meet. Regulation is needed to provide standards to evaluate for satisfying these objectives, and to also ensure that if a WFMP is cancelled, whatever mitigation and protection measures required by the WFMP are fully satisfied, so that a landowner may not simply walk away from commitments which were incorporated to ensure the long-term benefits identified by the legislature.

4597.11 - WFMP Notice

This section outlines the contents for the notice to operate under an approved WFMP. Once again, the Draft Regulations largely simply adopt the statutory language, without providing needed guidance and interpretation. *Compare* PRC § 4597.11(a) - (l) with Draft Regulation § 1094.8(a) - (m). Many of the statutory provisions need interpreting regulations.

Subsection (e) provides for a “statement” that no archaeological sites have been discovered in the harvest area since the approval of the WFMP. However, the WFMP contents outlined in Draft Regulation section 1094.6 make no reference to “archaeological sites,” referring only to “cultural or historical resources.” The current regulations do not define any of these three terms. Regulations are needed to clarify that the results of a search for “archaeological sites” must be documented in the WFMP.

Subsection (f) also provides for a “statement” that protected and listed species “have not been discovered,” and specifies requirements for disclosure of documented occurrences of these species and development of take avoidance and mitigation measures if this information is not provided in the approved WFMP. It goes on to specify a requirement to report “documented occurrences of the species” as obtained from publically available sources, but does not require an actual search for these protected species within the WFMP area or the area proposed for operations.

These two subsections do not expressly require a plan area “search” or “survey,” yet it is obvious that to make the required “statements” some search must have been done. Regulation is needed to clarify that an actual on-the-ground search for archaeological sites and these protected plant and animal species must be conducted and documented in the Notice. This search should be done within the proposed area of operations as well as through the review of public and readily available sources of information, including management area review. Otherwise, the landowner may make the statement that the sites and/or species have not been discovered, without any search.

Similarly, subsection (g) provides for a statement that “no physical environmental changes in the harvest area [] are so significant as to require any amendment” of the WFMP. Regulation is needed to clarify that an assessment and review of the land covered by the WFMP and proposed area of operation under the notice has been conducted to determine whether there are significant physical environmental changes which require a WFMP amendment.

Subsection (j) requires statement of “special provisions to protect unique areas within the area of timber operations,” but as with previously noted subsections, fails to require the elemental step to actually determine if any “unique areas” are within the area of timber operations. A requirement to determine if unique areas exist must be included.

Subsection (m) requires an update on erosion control mitigation measures “if conditions have changed.” Regulation is needed to interpret and provide standards for what constitutes “changed” conditions.

Draft Regulation subsection 1094.8(n) appears to be simply repeating what is in the statute, requiring any other information the Board may require by regulation. This appears unnecessary.

There is a second subsection “m” to Draft Regulation section 1094.8, on page 17, which appears to include some of the same requirements as for an NTMP. It is unclear, in the absence of effective regulation to ensure that the objectives of AB 904 will be implemented, to know whether some of these provisions and what they may allow in terms of operations are appropriate. We note that in the version we have reviewed, for subsection (m)(3)(2) there is a comment which reads “Delete regeneration methods to alleviate need to map unevenaged silviculture.” We do not understand why such a deletion would be appropriate, as a prime objective of the WFMP is to achieve uneven aged timber stands, and thus mapping those stands would seem advantageous toward documenting compliance.

4597.12 - Five Year Review

This section outlines a process for the five-year review of an approved WFMP.

Subsection (a) provides that the director shall convene a “meeting with the interdisciplinary review team” to “review” the administrative record and other information to “verify” that operations have been conducted in accordance with the WFMP. A field inspection “may” be conducted if a review team member requests one. As with other provisions, this language contemplates, yet does not expressly state, that an actual review must be done to “determine” if the Director can “verify” compliance. Regulation is needed to clarify this.

Subsection (b) provides that the Board shall adopt regulations for the development of a “plan summary” before each five-year review, for the purpose of allowing the review team to analyze information, including the number of notices of timber operations, the acreage operated under each notice, the violations received, and the volume harvested in relation to the projections of harvest in the plan.

The Draft Regulations section 1094.26(b) adopt these provisions. Subsection (b)(1)-(4) provides additional information, but it poorly worded so that it is unclear under what circumstances this information is required. It is also unclear whether this information constitutes the “plan summary” required by AB 904 Section 4597.12. If for example subsection (b)(1) is information to be provided in all instances, it requires an RPF for the WFMP owner to certify compliance. How then is that to occur? There are no provisions outlining the timing and manner in which that is to occur. Subsection (b)(3) is similarly unclear and objectionable. How are violations “received?” Either they are a part of the record or not. What standards are to apply to determine whether “potentially significant impact to public trust resources may occur from continuance of the WFMP?” And what is the process by which Cal Fire may be presented with “a fair argument that a project may have a significant effect on the environment?”

AB 904 section 4597.12 subsection (c) provides for public notice of the five-year review and a copy of the plan summary, with the ability to provide additional information to the review team for the five-year review. Draft Regulations section 1094.26(c) adopts this language,

without providing the necessary guidance as to how the public review can occur. The public is entitled to not only notice, but a defined period of time in which to review the plan summary and five-year review, particularly if the public wants to provide “a fair argument” as to significant effects on the environment and to public trust resources.

The Board needs to develop clear provisions for the five-year review to adequately implement the statute, to provide (1) a defined process and content for the “plan summary”, (2) a defined process for the five year review, which includes notice, scheduling, and agency and public access, (3) the standards which will be used to evaluate compliance with the WFMP as well as the legislative objectives such as uneven-aged management, added carbon sequestration, sustained production of timber and other forest products, aesthetics, maintenance of ecological systems and processes, etc., and (4) findings that are necessary to document the required “verification” required in Section 4597.

Section 4597.15 - Immediate Operation

This section provides that if the RPF certifies that the written notice conforms to and meets the requirements of the WFMP, then operations may immediately commence. While Section 4597.14 provides for disciplinary action against an RPF who makes any material misstatement, we find no provision in AB 904 which prevents and remedies impacts from immediate operations which are inconsistent with the approved WFMP. Regulation is needed to specify that should it be determined that a notice is materially misleading, the director has the right to and must immediately stop operations and proceed with Notice of Violation as provided in the FPR. The landowner as well as the RPF must be subject to discipline and held accountable.

Section 4597.17 - Change from NTMP to WFMP

This statute provides for a NTMP landowner to transition to a WFMP and requires the Board to adopt regulations to establish this amendment process. The Draft Regulations section 1094.29 appear to have not yet addressed this need. At this point, EPIC encourages the Board to draft regulation which clearly identifies how such a transition may occur, in a manner that ensures that the underlying NTMP provisions have been fully satisfied, and the rigorous standards imposed by the WFMP shall be incorporated.

Section 4597.18 - Safe Harbor Agreements

This provision allows a landowner submitting a WFMP to simultaneously seek a safe harbor agreement from the Department of Fish and Wildlife pursuant to the Fish and Game Code. The Draft Regulations adopt the statute’s language. The Draft Regulations simply adopts the statutory language. In doing so, they fail to address how the review process for the WFMP shall proceed in conjunction with, or independent from, the application for a safe harbor agreement. Clarity as to how these two application processes may proceed, and/or coincide, should be provided.

Section 4597.19 - State Restoration Projects

This section specifies that a state restoration grant application may not be summarily denied on the basis that the proposed restoration project is a condition of the harvesting plan. The Draft Regulations simply adopt the statute's language, failing to deal with some ambiguity. The term "harvesting plan" is not used in any other section of the Draft Regulations, so it is unclear what this references.

Section 4597.20 - Adoption of Regulations

This section gives the Board full authority to adopt regulations it finds necessary to implement AB 904. Thus, the Board needs to exercise its full authority to provide legitimate interpretation and guidance through regulation to advance AB 904's legislative intent.

III. Comments on Specific Draft Regulations.

In addition to those Draft Regulations which are referenced above, the following are specific Draft Regulations which need refinement or change.

Unnumbered Introduction to Working Forest Management Plan

The introduction which provides for equivalency of the term THP, timber harvesting plan, or word plan to the WFMP does not ensure that key information requirements and particularly the obligation to provide a cumulative effects assessment will be satisfied. Refinement is needed to ensure that at a minimum, key information requirements that are necessary to evaluate the WFMP are included. This can occur here or in the WFMP Contents regulation, at § 1094.6.

Section 1094.2 - Definitions

In addition to what is identified above, EPIC suggests the following changes:

The statute defines "late succession forest stand" as "stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs." AB 904, § 4597.2(g)(3). In addition, AB 904 provides that "[n]othing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval ." AB 904, §4597.(g)(1). EPIC recommends that the Board take notice of the Legislature's recognition that late succession forest stands can be much smaller than the current 20-acre limitation, to as little as one acre. Given this recognition by the Legislature that acreage of at least 10 acres--- or as small as 1 acre – qualify as late succession forest stands, EPIC recommends that the Board adopt a definition which permits late succession

forest stands one acre or larger, This is consistent with current Department policy. In addition, EPIC suggests that the Board apply the new definition of “late successional forest stands” across the board by amending the definition of “late successional forest” currently contained in 14 CCR 895.1 to reflect a change from the minimum 20 acres down to the one acre or more in order to ensure consistency of identification, and application of this definition across all ownerships and as a part of all timber harvest planning documents.

“Long-term sustained yield” for the WFMP should incorporate the objective and standard of “uneven-aged management” such that the planning horizon for an “un-evenaged forest encompassed by the WFMP has reached a balance between growth and yield.”

Section 1094.3 - WFMP Submittal and Notice of Preparation

The intent language provided in this section needs to be expanded to reference that the WFMP is for non-industrial landowners, and it should include the objectives set forth in Public Resources Code Section 4597(a)(5).

Section 1094.6 - Contents of the WFMP

In addition to comments concerning subsections of 1094.6 addressed above, EPIC suggests that the preliminary statement, which is patterned after the NTMP regulation at 14 CCR 1090.5, is too limiting. The WFMP should serve not only the functions as outlined, but the express function of developing an uneven-aged forest which ensures long-term benefits such as added carbon sequestration, local and regional employment and economic activity, sustainable production of timber and other forest products, and the maintenance of ecosystem processes and services.

Section 1094.6 (d)(7) - Methods used to avoid significant sediment discharge to watercourses from timber operations

This section needs better definition and precision, particularly as to the phrase in the last sentence which permits “compliance with similar requirements of other applicable provisions of law.” This is very vague and ambiguous, and needs specificity.

Section 1094.6 (d)(10) - Description of late succession forest stands

This section uses an undefined phrase – “a constraint of no net loss.” This needs definition so that it can be an enforceable standard.

Section 1094.6 (d)(13)(A) - Description for each management unit

This subsection illustrates well the issue concerning the need for a “LTSY plan,” as it expressly refers to the “LTSY plan,” yet as discussed above, the regulations do not require a “LTSY plan.” The regulations should require an LTSY plan.

Section 1094.6 (d)(15) - LTSY projections for reduction in trees greater than 12 inches in diameter or reduced level of inventory of a major stand type

This subsection appears to permit a reduction in LTSY, provided certain resources (protected species, species habitat, and constraints no timber management) are “addressed.” EPIC objects to this provision, as written, as it appears to permit reduction in overall canopy and age classes. The subsections (A), (B) and (c) are also all unclear to the extent they require the WFMP to “address” the identified resources and issue, as it the term “address” is too vague and without criteria to gauge whether the information to be presented may be adequate. Stricter standards are required to ensure that any such reduction in LTSY must be limited, so as to prevent disregard for the core objectives of a WFMP.

Section 1094.6 (d)(17) - Certification of personal inspection of plan area

One of the ongoing concerns in private land forestry is the lack of disclosure and inspection of the entirety of a plan area. This subsection should be amended to require that the certification attests to personal inspection of “all of the plan area.”

Section 1094.6 (d)(18) - Any other information required by regulation

This subsection appears unnecessary.

Section 1094.6 (d)(25) - Description of cumulative impacts analysis

As referenced above, the Draft Regulations need to include an express required that a cumulative impacts analysis is required.

Section 1094.10 (d) - Plan submitted responsibility

It is unclear to EPIC why a provision would be included to exempt corporations from the duty to file a notification of change in responsibilities or substitution of an RPF “because the RPF of record on each document is the responsible person.” This makes no sense, as the RPF of record is always a responsible person, subject to significant license requirements. A corporation is no different than a person under the code, Public Resources Code Section 4525, and should be treated no differently when it comes to notifying the Department of changes of the RPF for WFMP implementation.

Section 1094.11 (e) - Registered Professional Forester Responsibility

This subsection refers to “attainment of the resource conservation standards of the WFMP.” As discussed above, the Draft Regulations do not identify requirements for or specifics of “resource conservation standards” for any given WFMP. Thus, this terminology is meaningless. Draft Regulation section 1094.6 must include express resource conservation standards.

Section 1094.17 - Agency and Public Review for the WFMP
Section 1094.18 - Director's Determination

We address these two sections together because we believe they need to be reorganized to better outline first the review process for the WFMP, and second the decision-making process for the WFMP.

To illustrate this need, we note that while section 1094.17 provides for posting of the WFMP, and circulation to other public agencies, it says nothing about a review process for the general public. That is found in section 1094.18(a)-(c). These provisions should be in the same regulation.

With respect to introduction to section 1094.17, the placement of the proposed plan is provided as either in a location OR on an internet Web site. The proposed plan should be available BOTH in a location and on an internet Web site.

Section 1094.17(a) permits the Department to "bill such persons," but it is entirely unclear what "persons" are referenced here. This appears to be a consequence of cutting and pasting from the NTMP regulations, and the deletion in the Draft Regulations of the provision that the Department shall transmit a copy of any specific plan to any person who has made a written request for it. EPIC believes that this subsection needs to be reinserted.

The provisions of section 1094.18(a)-(c) should be placed in section 1094.17, as provisions identifying "agency and public review for the WFMP." Additional language is needed to identify the manner and format in which the public may provide comments.

The Draft Regulations adopt AB 904 Section 4587.6(a) process for public review. Section 1094.18 (d) identifies what is needed for approval. While technically this is part of the Director's determination, it is clearly part of the review process. It is unfortunate that the Draft Regulations simply adopt the structure of AB 904 Section 4587.6, rather than organize the regulations to deal first with the review process, and second with the decision process. Additionally, Section 4587.6(a) does not provide a provision to determine "completion of final interagency review of the plan." This provision is adopted in Draft Regulations subsection 1094.18(d)(4). A provision is needed to define what constitutes "completion of final interagency review of the plan." The Board should address this through regulation.

Draft Regulations section 1094.18(e) - (h) effectively provides a right of appeal to a landowner in the event the Director finds the WFMP is not in conformance with the rules. As discussed above, the Draft Regulations need to clarify the process as an "appeal" process, and provide appropriate procedures to document decision-making.

Section 1094.20 - Nonconformance of the WFMP

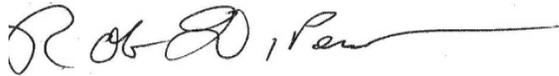
This section appears to be a copy of the NTMP regulation 14 CCR 1090.20, and by reference to 14 CCR § 1054, appears to introduce conflicting provisions from those set forth in

Draft Regulations section 1094.18. Careful review is needed to determine whether this section should be included.

IV. Conclusion

EPIC appreciates the opportunity to provide comments to the Committee at this early stage of regulatory development for the WFMP. Please do not hesitate to contact me at the number provided below if there are questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Rob DiPerna", with a long horizontal flourish extending to the right.

Rob DiPerna
California Forest and Wildlife Advocate

Environmental Protection Information Center
145 G Street, Suite A
Arcata, California 95521
Office: (707) 822-7711
Email: rob@wildcalifornia.org



Keeping Northwest California wild since 1977

Sent via Electronic Mail to: Matt.Dias@bof.ca.gov on Date Shown Below

August 20, 2015

Matt Dias
Acting Executive Officer
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Follow-up from August 12, 2015 Phone Conversation

Dear Mr. Dias:

Thank you for taking the time on August 12, 2015 to discuss and answer my questions concerning the status of the Working Forest Management Plan regulatory package.

This letter contains what I understand to be your responses to the several questions I posed. Please let me know if I have correctly stated your responses, and if not, what you believe is incorrect.

Question 1: What is status of the Supplemental Statement of Reasons? When will it be issued? Will we receive a copy when completed?

You advised that you did not know at the time of our conversation when the Supplemental Statement of Reasons for the Working Forest Management Plan rulemaking would be issued. You indicated that board staff intends to prepare necessary materials for another rulemaking package prior to initiating work on the Supplemental Statement of Reasons for the WFMP. You promised me that you would send us a copy of the Supplemental Statement of Reasons when it is prepared for issuance.

Question 2: Can we please receive copies of any and all responses he received to the board's request for economic data regarding the WFMP?

Environmental Protection Information Center
145 G Street Suite A Arcata, CA 95521
(707) 822-7711
www.wildcalifornia.org

You advised that the Board's response to Sharon Duggan's recent Public Records Act Request would include all materials and responses received by the board staff in response to the economic data request.

Question 3: Does board staff intend to do any summary or independent staff assessment of the responses to his request for economic data. If so, when? Will said analysis be included in the Statement of Reasons?

You stated that board staff would not conduct an independent assessment of the responsive information gathered in response to the economic data request, but that such material would be reviewed by board staff and included as part of the Final Statement of Reasons.

Question 4: Does board staff have any plans to return to the BOF with the rule package? If so, when?

You stated that board staff does not intend to bring the WFMP rulemaking package back before the full board for reconsideration. Board staff intends to send the rulemaking file to OAL. You did state, however, that board staff reserves the right to return the package to the full board for reconsideration if "something unique" is discovered in the process of reviewing the information responsive to the economic data request.

Question 5: When do you expect to issue a Notice of Decision? Will you provide us with a copy when it is completed and issued?

You stated that you were not able at the time of our conversation to provide us with a timeline or date-certain for issuance of the Notice of Decision. You indicated that the issuance of the Notice of Decision is predicated on how fast board staff is able to compile the necessary documentation and submit it to OAL. You promised me that you would provide us with a copy of the Notice when it is prepared and issued.

Question 6: When do you expect the final package to be submitted to OAL? Will you provide us with a copy once it is submitted?

You advised that you did not know when the final package would be submitted to OAL, and that this would likely occur in mid-October, sometime between the 12th and 17th. You promised me that you would provide us with a copy of these materials once they are submitted to OAL.

If you find that I have mischaracterized any of your responses, please provide me with a written clarification response at the earliest possible date.

Thank you for your courtesy and cooperation in this matter. Please do not hesitate to contact me as necessary.

Sincerely,



Rob DiPerna

California Forest and Wildlife Advocate
Environmental Protection Information Center
145 G Street, Suite A
Arcata, California 95521
Office: (707) 822-7711
Email: rob@wildcalifornia.org



COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

Affiliate of Redwood Coast Watersheds Alliance

July 17, 2014

George Gentry, Executive Officer
Management Committee
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Additional Comments Comment - Rule Making Consistent with the Language of AB 904
– Working Forest Management Plan

Dear Mr. Gentry and Management Committee Members:

The most recent DRAFT of the proposed language for the rules implementing AB 904, Working Forest Management Plan, have made significant improvement in reflecting the intent of AB 904 and the mandate of the legislation to be consistent with all California Code.

However, there are still some outstanding issues which that must be addressed in this rule making process. This letter speaks to the need to include assessment and inventory of potential sediment sources (as proposed by the Regional Board and required by Cal Water Code and the Basin Plan for the North Coast). It appears the committee has issue determining necessity for inclusion of language requiring assessment and inventorying (including prioritizing remediation of sediment control actions necessary to protect beneficial uses) potential sediment sources as part of the sediment control plan for a Working Forest Management Plan. Please refer to Coast Action Groups previous comments (June 4, 2014).

The language of AB 904 is based on the concept of permitting a long term forest stewardship document that is designed to not only protect current resources – were the plan must assess and recover forest productive resources – including water quality and wildlife values. The language in the bill is very clear on this subject.

The following includes a discussion of the logic, benefits, and requirement(s) (under Cal Code and the legislative intent) to include such language:

Erosion Control

First it must be understood that a source that are actively emitting sediment (to high quality waters or waters that are listed as Impaired – California’s list of Water Quality Limited Segments) is a violation of the Basin Plan (and Cal Water Code). And, in fact, such ongoing violations are subject to Notice of Violation (and penalty – Administrative Civil Liability). Additionally; delivery of such pollutants to surface waters is a violation of the Forest Practice Rules (Act – no plan may be approved that is in violation of the applicable water quality control plan). The Basin Plan and Cal Water Code call for control of threats to water quality (before they become actual violations). Under the Basin Plan and Cal Water Code (Porter-Cologne) “potential” pollutant sources are equal to “existing” pollutant sources. Threats water quality must be controlled before they become violations. This applies to all pollution sources, existing or potential – including septic, wastewater, stormwater, etc.. Thus, plans (THPs, NTMPs, WFMPs) must assess and provide for remedy potential pollutant sources – prior to plan approval.

Note: Once a Violation has been noted by the Regional Board (or CDFW, CalFire) the remedy can not be supported by restoration grants supported by State funding.. This is just one argument for the assessment and remediation of potential sources prior to a violation is noted.

Note: The current THP/NTMP review process supports assessment and remedial consideration of, both, active and potential sediment sources. These CEQA compliant documents are replete with disclosure of the location and nature of active and potential sediment production issues and discussion and description of the remedy – prior to plan completion and/or prior to significant rain events. This discussion/disclosure in the plan is supplemented by an Erosion Control Plan document.

(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.

The language AB 904 (above) implies stewardship that protects watersheds and fisheries (as well as other forest values). It can be fairly argued that failure to assess and prioritize for remedy of potential sediment sources fails consistency with the above noted objective (as well as mandates under other California Code).

The AB 904 language, below supports the discussion (above) – necessity for inclusion of potential sediment sources :

Prior to plan approval:

4597.2. (b) A description of the land on which the plan is proposed to be implemented, including a United States Geological Survey quadrangle map or equivalent indicating the location of all streams, the location of all proposed and existing logging truck roads

This description and mapping should be included as part of Erosion Control Plan (or inventory of roads, erosion sites – ongoing or potential – and schedule for remediation) to be included in the Plan.

As per the following:

*(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***

The AB 904 language is clear. Any CEQA or legal review of this rule making action will support the inclusion of this language in the rule making process.

Finally,:

It is only logical (as noted in the current process of THPs/NTMPs) and the intent of the AB 904 language that plan review shall include:

Field assessment by the RPF (and Regional Board, CDFW, CalFire staff during field review and agency reports).of any and all active and potential sediment sources.

Such sources, and potential sources, shall be disclosed in discussion and mapped .

Assessment shall include a description of the issue, estimate of pollutant contribution, or potential contribution, with discussion of relevant potential – need for remedy, and relationship in a priority continuum (schedule for remedy).

Description of remedial action.

Prioritization and scheduling be maintained on an inventory list where progress to completion of remedial project completion is tracked (and maintained by CalFire and Regional Board Staff).

The above shall be maintained as and “*Erosion Control Implementation Plan*” (as per the specific language of AB 904) – subject to the review and approval of all responsible agency as part of the Review Team. The “*Erosion Control Implementation Plan* “ shall be considered part of the Working Forest Management Plan. Failure to comply with the “*Erosion Control Implementation Plan*” would require revocation of the Working Forest Management Plan

Sincerely,

Alan Levine for Coast Action Group



COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

Affiliate of Redwood Coast Watersheds Alliance

August 20, 2014

George Gentry, Executive Officer
Management Committee
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Additional Comments (#3) - Rule Making Consistent with the Language of AB 904 – Working Forest Management Plan – August Pleading

Dear Mr. Gentry and Management Committee Members:

I have mentioned in previous comments on this Rule Making process for the Working Forest Management Plan – the need to be consistent with all applicable law – including the language contained in AB 904 (see previous comments). To date, the language in the pleading fails in a test of consistency (AB 904 section 4597.2. (b) and (d)). Additionally, in this rule making process, with final approval of the rule - as a project under CEQA – there is a requirement that the rule be internally consistent. That is; different sections must be consistent with each other (which is not currently the case). The following discussion will point to some issues, but not all, regarding internal inconsistency.

Sample Marking in the WLPZ: Sample marking in the WLPZ is to be allowed (similar to NTMPs – however NTMPs are smaller and more manageable – thus, this is not a similar situation or issue). The question arises; that with such sample marking (anadromous streams) compliance with beneficial use protection (canopy removal, stream temperature, and other habitat issues) can not be fully addressed. Sample marking does not provide, or assure, compliance with actions necessary to attain the desired/target outcomes that are necessary. Nor, does sample marking provide the information necessary for managing agencies to make adequate determinations. Note: THPs require marking the entire WLPZ for ASP compliance.

Long Term Sustain Yield - Definition and terminology in the rule language is insufficient. See discussion provided by Sharon Duggan.

1094.6 Contents of a Working Forest Management Plan - information provided in WFMP (and this section of the rule language) must go beyond disclosure of the potential effects of the plan –

timber management. CEQA requires complete and accurate description of the project – as well as complete analysis of potential effects and mitigatory process. Some areas (sections) of the rule making do contain aspects of (but not all) the necessary information – where this information is absent from other sections. This is a problem of consistency that needs to be fixed.

(d) (4) Probable Location of proposed and existing landings in WLPZ. Probable? I would remove that word. The public and managing agencies need to know the location of these aspects of the plan – for adequate review and assessment.

Added to this section should be the location of all existing and potential erosion control issues (road failures, slides, unstable soils, etc.) Or – this information can be contained in the Erosion Control Implementation Plan.

(e) (8) This section fails to include potential erosion features that must be located and enumerated in the plan (As per the plain language in AB 904) – or – be inventoried and noted in the Erosion Control Implementation Plan.

(28) Explanation of justification for use of landings, roads, skid trails in watercourse, marshes, or wet meadows. Isn't there a policy of avoidance of these areas in the Forest Practice Rules? In-cursion into these areas can hardly be justified – or – mitigated.

(34) A description of the Lakes, meadows, and other wet areas : Included should be the location and mapping of these areas.

1094.8 Working Forest Harvest Notice Content

Information required in this section is not consistent with 1094.6

Certification of compliance by the RPF for beneficial use protection can not be accomplished– if there is failure to identify or locate slides and unstable areas, erosion sources (including potential), wet areas, activities to occur in wet areas or adjacent to or on erosion prone areas – and note applicable mitigation. Most of all of this information should be contained in an Erosion Control Implementation Plan.

An Erosion Control Implementation Plan is mandated as part of any WFMP. Certification by the RPF without such a plan in place is not consistent with the wording or intent of AB 904. Contents and use of the Erosion Control Implementation Plan must be fully described in the rule making.

The use of terminology “unreasonable expense” does not (can not) justify operations that violate the language and intent of: Basin Plan for the North Coast, Porter-Cologne Water Quality Control Act (Cal Water Code), DFG Code, Federal Endangered Species Act, and other California Code. This should be made clear in the Rules for WFMP.

Sincerely: Alan Levine for Coast Action Group



COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

February 4, 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

Through the Rule Making process in the Management Committee issues of conformance to the language and intent of AB – 904 have, in part, been addressed. However there are outstanding/unresolved issues that require consideration and correction by the Board of Forestry.

With this letter outlining remaining issues, Coast Action Group is submitting (as part of our comments to the file) historic comment presented during the Rule Making process for review and consideration for developing final rules that are consistent with language and intent of AB 904 and other California Regulations and Statute.

Intent and Purpose

This rule making process, required by AB 904, allow for an extremely large scale project (up to 15,000 acres) - timber harvest management standards will exist in perpetuity. The intent and purpose of AB 904 and related rule making process was to allow development of projects that 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.

Presently the current language in the proposed rules for the Working Forest Management Plan has lost sight of what is being – or can be accomplished here.

Issue

Notice states “Proposed action is not expected to have an effect on the health and welfare of California residents....”

This statement/finding can not be made if:

The agency review period for WFMP is not sufficient for the Review Team to effectively review and assess such large properties and provide responsible agencies and the public with complete and accurate information for an informed decision making process. Please be aware that the proposed review period is not sufficient to accurately review a 1,000 acre Timber Harvest Plan and provide responsible agency and the public sufficient information, assessment, and mitigatory process for an informed decision making process required by CEQA.

If within the planning document there is not reasonable assurance of compliance of the goal of Long Term Sustained Yield – with measurable targets supported by periodic review that factually supports that identified management activities are meeting such targets. Current language in the WFMP language falls short of providing such assessment and compliance with LTSY.

If within the planning document the Erosion Control Implementation Plan is not inclusive of a planning and implementation schedule to remedy active and potential sediment sources with timelines that provide reasonable assurance of compliance with – the Forest Practice Act, Cal Water Code (Porter-Cologne), and the Basin Plan.

1094.6 Contents of WFMP

1) Silvicultural method(s) to be applied during the initial harvest(s), projected future 14 harvest(s) and method(s) used in the projected growth and yield to achieve LTSY.
(i) 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 resulting in significant sediment discharge and violation of water quality requirements. The WFMP shall also include an erosion control implementation plan and 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.

To be consistent with AB 904 Cal Water Code, CEQA, the Forest Practice Act, and the area Basin Plan(s) inclusion of the word “potential” (to effectively use this word in the rules and mandated Erosion Control Implementation Plan – as part of 1094.6 Contents of WFMP) – must be included in the wording of this section (to assure recognition and remedy, with prioritization, of controllable potential sediment sources).

Additionally: the language in the WFMP Rule Making the words for sediment control must include "Potential" sediment sources as well as "Existing or Active" sediment sources as necessary for TMDL compliance with State and/or EPA TMDLs. Definition wording for “Potential” shall be consistent with Cal Water Code and Basin Plan definitions (existing or perched material that is

likely to enter a watercourse if not treated).

We reference and support discussion on this subject in Regional Board (Region 1) letter to the Board of Forestry September 30,2014 – Comments on Working Forest Management Plan

We request clarifying language to solve issue regarding interpretation of the last sentence in the paragraph above: 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 meaning and intent of this language is unclear – convoluted. The interpretation of this language is likely to lead to interpretation that diverges from the intent of the AB 904 and necessity to meet legal requirements to comply with the Basin Plan(s) and other California Code – including CEQA consistency requirements.

These comments and previous comments (with discussion of issues) are submitted to the file for your review and consideration.

Sincerely: Alan Levine for Coast Action Group



COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

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 5th 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)

:



COAST ACTION GROUP
P.O. BOX 215
POINT ARENA, CA 95468

Affiliate of Redwood Coast Watersheds Alliance

June 4, 2014

George Gentry, Executive Officer
State Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Comment - Rule Making Consistent with the Language of AB 904 – Working Forest Management Plan

Dear Mr. Gentry:

Included below are our current comments regarding specific use related to this rule making process. As indicated by previous letter and a history of Coast Action Group involvement in the development of AB 904 and other Board of Forestry Rule Making and Regional Water Board Rule Making, we have indicated our concerns and positions related to development and adoption of such rules affecting water quality and forest values.

Briefly, our major concerns with the current rulemaking process falls in a limited area of categories – including:

- * Consistency with the wording and intent of the AB 904 Legislation
- * Noticing
- * Erosion Control Inventory and Planning
- * Maintenance and recruitment of Late Seral (old growth) values and inventory
- * Water Quality Considerations (Compliance with Basin Plan)
- * Review Period
- * Clarification of some operational considerations (i.e. Limiting amalgamation of properties).

Consistency with the language and intent of the Legislation:

Note: Language from the legislation included in this document will be indicated so – in italics.

4597.20. The board shall adopt the regulations needed to implement this article by January 1, 2016.

The bill would require the board to adopt regulations needed to implement the above provisions by January 1, 2016. (P.2)

The language and intent in the legislation is clear and uncomplicated. The language in the rule making/regulation shall be consistent with and adequately reflect the plain language of the legislation. Deviation from the legislative language and intent is not acceptable. Any, such deviation in language that is required to be consistent with other State Code or regulation shall be supported by justification and analysis.

This rulemaking is a project under CEQA. Consistency with the legislative language and any alteration of language shall be reviewed for applicability – where the language must address the legislative intent. Rule language must address any issue in a manner equal to or better than the stated language in the legislation.

Current iterations of the rule contain some apparent language changes, differences, that appear to fail to meet the legislative language and/or intent of the legislation. In these comments, we are pointing out the legislative language at issue and expect the Board to make appropriate adjustments – to be consistent with and reflect the legislative language. We are not offering language fix suggestions.

Noticing (and) Review Periods

The bill contains language that indicates noticing and maintenance of web-based documentation of the Plan. Rulemaking language shall indicate that not only the plan should be available on the web – all available documents necessary for accurate review of the plan shall be maintained on the web as part of the Plan.

4597.3. The board shall adopt regulations regarding the notice of receipt of the proposed working forest management plan. The notice shall be given within two working days following receipt of the proposed management plan and shall be consistent with all applicable laws. The method of notice shall include, but not be limited to, mailed notice and Internet-based notice. The regulations may require the person submitting the working forest management plan to provide to the department a list of the names and addresses of persons to whom the notice is to be mailed.

4597.4. The department shall provide notice of the filing of working forest management plans, the proposed plans, and working forest harvest notices on its Internet Web site, and to any person who requests, in writing, that notification.

4597.5. Upon receipt of the proposed working forest management plan, the department shall place the proposed plan, or a true copy of the proposed plan, in a location or on an Internet Web site available for public inspection in the county in which timber operations are proposed under the plan. For the purpose of interdisciplinary review, the department shall also transmit a copy to the Department of Conservation, the Department of Fish and Wildlife, the appropriate California regional water quality control board, the county planning agency, and all other agencies having jurisdiction by law over natural resources affected by the plan. The department shall invite, consider, and respond in writing to comments received from public agencies to which the plan has been transmitted and shall consult with those agencies at their request.

4597.6. (a) *The department shall provide a time period for public comment, starting from the date of the receipt of a working forest management plan, as follows:*

(1) Ninety days for a working forest management plan for less than 5,000 acres.

(2) One hundred ten days for a working forest management plan for between 5,000 and 9,999 acres.

(3) One hundred thirty days for a working forest management plan for between 10,000 and 14,999 acres

As noted above, review periods may need to be altered due to Plan changes and late information provided by the timberland owner, or as required by the Review Team – to attain the stated objectives of the Act and Rules. Thus, additional time for responsible agency and public review may be required. This should be considered in the rulemaking .

Erosion Control

(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.

The definition, above, indicates language (rule language) that will sufficiently protect water quality values as well as habitat and uneven aged development and recruitment (with late seral implications – see below).

Prior to plan approval:

4597.2. (b) A description of the land on which the plan is proposed to be implemented, including a United States Geological Survey quadrangle map or equivalent indicating the location of all streams, the location of all proposed and existing logging truck roads

This description and mapping should be included as part of Erosion Control Plan (or inventory of roads, erosion sites – ongoing or potential – and schedule for remediation) to be included in the Plan.

As per the following:

(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

Maintenance and recruitment of Late Successional (old growth type) values and inventory

Language shall be included to assure maintenance of inventory , protection, and recruitment of late successional forest type:

(g) (1) A description of late succession forest stands in the plan area and how the total acreage of this type of habitat will be maintained across the plan area under a constraint of no net loss. Nothing in this requirement shall be interpreted to preclude active management on any given acre of an approved plan if the management is conducted in a manner that maintains or enhances the overall acreage of late succession forest stands that existed in the plan area upon initial plan approval. An exception to the no net loss con-

straint may be granted in the event of a catastrophic loss due to emergency factors such as wildfire, insect, and disease activity. The description shall include the following:

(A) Retention measures for existing biological legacies such as snags, trees with cavities or basal hollows, and down logs, and address how those legacies shall be managed over time appropriate with the forest type, climate, and landowner's forest fire fuels and wildlife management objectives.

(B) Hardwood tree species and how they will be managed over time.

(2) Late succession forest stand types or strata shall be mapped.

(3) Notwithstanding the definition of late succession forest stands in Section 895.1 of Title 14 of the California Code of Regulations, and for the sole purpose of this article, "late succession forest stands" means stands of dominant and predominant trees that meet the criteria of the California Wildlife Habitat Relationships System class 5D, 5M, or 6 with an open, moderate, or dense canopy closure classification, often with multiple canopy layers, and are at least 10 acres in size. Functional characteristics of late succession forest stands include large decadent trees, snags, and large down logs.

(h) Disclosure of state or federally listed threatened, candidate, endangered, or rare plant or animal species located within the biological assessment area, their status and habitats, take avoidance methodologies, enforceable protection measures for species and habitats, and how forest management will maintain these over time

This is to include protection of other wildlife values (as stated – above – and – below)

(2) (A) For long-term sustained yield projections, pursuant to subdivision (c), that project a reduction in quadratic mean diameter of trees greater than 12 inches in diameter or a reduced level of inventory for a major stand type or for a stand or strata that make up greater than 10 percent and less than 25 percent of the working forest management plan area, an assessment shall be included that does all of the following:

(i) Addresses candidate, threatened, endangered, and sensitive species, and other fish and wildlife species that timber operations could adversely impact by potential changes to habitat.

(ii) Addresses species habitat needs utilizing the "WHR system" described in "A Guide to Wildlife Habitats in California," California Department of Fish and Wildlife, 1988, or comparable typing system.

(iii) Addresses constraints to timber management, the impact of the availability and distribution of habitats on the ownership and within the cumulative impacts assessment area identified in the plan in relation to the harvest schedule, and the impacts of the planned management activities utilizing the existing habitat as the baseline for comparison.

(iv) Discusses and includes feasible measures planned to avoid or mitigate potentially significant adverse impacts on fish or wildlife, which can include, but is not limited to, recruitment or retention of large down logs greater than 16 inches in diameter and 20 feet in length, retention of trees with structural features such as basal hollows, cavities, large limbs, or broken tops, retention of hardwoods, and retention or recruitment of snags greater than 24 inches in diameter and 16 feet in height.

Other Water Quality Considerations (Compliance with Basin Plan)

Review Period

Clarification of the review period(s) and the opportunity for public participation is needed

The bill would require the department to provide a public comment period of at least 90 days from the date of the receipt of the plan, as specified.

These are very large scale and detailed plans – requiring significant and detailed review and reporting by the land owner and participating agencies. The current language needs to address the issue of additional time need

by agencies to obtain required information and for the public to have sufficient time to obtain an review that information.

Additionally, if the plan changes in process or is altered by Second Review recommendations, the public and participating agencies need additional time for review.

The language for the 5 year interdisciplinary review shall contain opportunity for public comment on such review. 4597.12 (c)

Clarification of Operational Considerations

There is concern (where clarification is needed in the rules) that there will be attempts to amalgamate (combine) properties to qualify these properties, under this act as a Working Forest Management Plan.

Such amalgamation of combining of properties would provide numerous review and management problems – with varying and different – stand types, strata, management goals, erosion problems, ECPs, and other requirements. Allowing such combinations of different ownerships (under one plan) would make review and management of the Working Forest Management Plan impossible for responsible agencies review and monitor – and , thus, defeats the intent of the legislation.

Language in the bill indicates one owner/operator

The bill would authorize a person who intends to become a working forest landowner, as defined, to file a working forest management plan with the department, with the long-term objective of an uneven aged timber stand and sustained yield through the implementation of the plan

- (i) *“Working forest landowner” means an owner of timberland with less than 15,000 acres who has an approved working forest management plan and is not primarily engaged in the manufacture of forest products.*

Other Considerations

Carbon Sequestration -

(5) 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 plans shall comply with rigorous timber inventory standards that are subject to periodic review and verification

The above language suggests stringent inventory review that maintains forest values (species, water quality, old growth) – and – additionally assures accrual of carbon. Rule language should reflect this.

Amendments

Amendments shall comply with existing rules and applicable codes (including the regional Basin Plan) at the time of amendment:

4597.7. The working forest landowner may submit a proposed amendment to the approved plan and shall not take any action that substantially deviates, as defined by the board, from the approved plan until the

amendment has been filed with the director and the director has determined, after completion of the interagency review and public comment period, either of the following:

(a) The amendment is in compliance with the current rules and regulations of the board and the provisions of this chapter.

(b) The amendment is in compliance with the rules and regulations of the board and the provisions of this chapter that were in effect at the time the working forest management plan was approved. The director may only make this determination if the registered professional forester explains, justifies, and certifies both of the following:

(1) The adherence to new or modified rules and regulations of the board would cause unreasonable additional expense to the working forest landowner.

(2) Compliance with the rules and regulations of the board and the provisions of this chapter that were in effect at the time the working forest management plan was approved will not result in any significant degradation to the beneficial uses of water, soil stability, forest productivity, or wildlife

Growth and Yield Targets

The language in the legislation is very clear regarding criteria used to establish growth and yield targets.

The language in the rules must adequately reflect the legislative language and intent.

Compliance with State Code

Rulemaking shall comply with the following:

(b) This article shall be implemented in a manner that complies with the applicable provisions of this chapter and other laws, including, but not limited to, the Timberland Productivity Act of 1982 (Chapter 6.7 (commencing with Section 51100) of Division 1 of Title 5 of the Government Code), the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code), the Porter Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code), and the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of the Fish and Game Code).

Rulemaking shall reflect and be consistent with language and intent of the legislation (AB – 904)

This includes Cal Water Code (Porter-Cologne) and the regional Basin Plans. Erosion control planning that does not consider potential erosion sources is not consistent with the Basin Plan. Rulemaking that does not consider Regional Water Board Temperature Policy is not consistent with the Basin Plan.

All provisions of the section 4597.11 will be clearly stated in enforceable language.

Sincerely,

Alan Levine, for Coast Action Group