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Board of Forestry and Fire Protection

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Comment letter re: BOF Cumulative impacts rules

Monday, August 14, 2017

To Whom It May Concern:

“REASON IS NOT AUTOMATIC. THOSE WHO DEFY IT CANNOT BE PERSUADED BY IT.” ---Ayn Rand

CEQA requires project submitters to disclose potential significant impacts to reviewing agencies and the public, and to provide mitigation measures to prevent significant, avoidable environmental damage. Determining whether an impact is significant is critical because it determines whether an EIR must be prepared, while the type of impact and level of significance determines whether and to what extent a margin of safety is required, enforcement, implementation, contingency plans, bonding, mitigations, time schedules, and whether or not the entity that benefits from the creation of the impact will be held accountable for remedy of physical damage impacts, destruction of domestic water supplies, the creation of increased flooding, or financial damages.

CEQA as written, is reasonable. The proposed CI Rule package as written by Board of Forestry is neither reasonable or defensible. Instead, the proposed CI Rule package is designed to *guide* decisions while avoiding enforceable implementation, contingency bonding, mitigation standards, time schedule standards, accountability, or remedies for impacts. Remember: these enforcements are necessary to avoid impacts from predictable human behavior which means not all humans share the same moral compass.

Guidance without enforcement amounts to a prayer. And if uttering prayers on Sunday is insufficient to guide human behavior then why would the BoF believe that its prayers to timber operators would guide them effectively? Faith-based regulations are antithetical to democracy. While prayers may help us feel better, regulations force us to behave better. The timber industry does not need more prayers; it does need a correction in its moral compass.

As recent hate crimes in Charlottesville, North Carolina demonstrate, not all humans will follow guidance or prayer and in fact, some will even defy guidance if no enforcement exists...likely followed up by a prayer for forgiveness. There is no forgiveness for what this Board has done to Elk River.

Timber harvest operators are only human; they too have amply demonstrated that even with strict enforcement they will defy guidance and defeat attempts to

be enforced. Like every teenager resistant to authority, the timber industry has figured out how to become so pesky to its custodian (BoF) that the custodian stops enforcing regulations just to avoid the hassle. How many parents can effectively take away a teenager's cell phone without suffering enormously because of that enforcement? Obviously BoF's need to exclude enforcement comes from a place of fear of reprisal from the very industry BoF is entrusted to regulate. I pray you all do a better job as parents.

To heck with enforcement! Why don't we just post *guidance* rules on our streets and highways? As my 85-year old father became increasingly demented, he once drove the wrong way on a one-way street. When I pointed out the wrong way sign, my father said, "Oh, that sign is for all the other a**holes!" Apparently that's also the attitude of the timber industry: guidance and rules be damned...we're special! We can forgive one old man for being demented. We cannot condone an entire Public Trust agency for creating demented regulations.

As responsible parents ("custodians") of our children, we offer *guidance*, but we apply *enforcement* to ensure a positive outcome. As responsible public citizens, particularly those of you entrusted to be custodians of the Public Trust, we must enforce regulations on human behavior otherwise only the bullies or the demented rule. As the destruction of Elk River amply demonstrates, lack of enforcement on human behavior results in devastation and big profits for a very few.

Thus Elk River is now filled with seven to nine feet of trash from logging. Not only does the timber industry refuse to clean up the mess that it, and only it, has intentionally created, the public taxpayers are now being asked to pay to wipe the demented rear of timber. Clearly the timber industry is either ignorant of its bad behavior or simply has no conscience. These are precisely the kind of humans (teenagers, miscreants, mental incompetents) that require enforcement to maintain a civil society. Where is the custodial parent as the naughty child continues to harm others?

The proposed CI Rule package appears designed to immunize those who benefit from the creation of impacts from accountability and to enable the infliction of harm onto this and future generations. BoF has offered no rational or even possible benefit to lack of enforcement. This Rule package is supposed to guide humans; but these timber humans have already demonstrated they don't honor guidance and they don't accept enforcement. Is BoF acquiescing to this form of tyranny because it's safer than performing your duties as required by us, the Public? Either BoF is afraid of the timber industry or codependent with them. In either case, this board is corrupted and certainly not trusted.

To the extent that sediment or peak flow nuisance conditions, associated with prior Plans, have manifested downstream of the Plan area, CDF needs to provide and rely on alternative, unbiased information for the determination of significance. The determination must eliminate the nuisance before harvest activity commences and identify a time schedule and funding source because Public Resource Code § 740 states "...shall determine, establish and maintain an adequate forest policy. to protect the soil, air, fish, wildlife, and water resources..." PRC § 4551. Because the CI Rule package is "guidance" and not "enforcement" the requirement "to protect the soil, air, fish, wildlife, and water resources..." is designed to be rendered meaningless. This abuse invites discretion to substitute for the mandatory language. To the extent that the CI Rule renders protection of the soil, air, fish, wildlife, and water resources to be lessened, present and future generations will be impoverished.

According to BOF, "The purpose of the proposed action aligns the impact analysis within the FPRs and current CEQA guidelines." BOF intends to do so by altering the requirement "to protect the soil, air, fish, wildlife, and water resources". If the Legislature had intended this alteration, the Legislature would have done so. BoF continues to hide behind arcane legalese while saying nothing of substance. BoF has utterly failed to make a rational case for its position because BoF doesn't incorporate public input.

BOF states "Pursuant to the APA, no state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a "regulation". "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure."

BOF ignores the alternative where the ARB and CDF would analyze greenhouse gas emissions and wildfire spread impacts. This alternative would reduce costs for foresters while utilizing the vast monitoring and analysis systems that ARB and CDF&F already maintain and staff. These systems rely on highly specialized technical and scientific expertise far beyond what a forester has and are designed to be impartial and comprehensive. These impacts primarily affect all Californians.

BOF states: "For purposes of this section, past projects shall be limited to those projects submitted within ten years prior to submission of the THP Plan." This rule is inane, based on vaporous balderdash. Wildfire spread, greenhouse gas emissions, sediment, and peak flow impacts are directly related to legacy impacts over at least the past 40 years. BoF is expected to understand this. This rule is also frivolous and cruel as it places ridiculous and avoidable impacts onto future generations. Timber harvest operators may be immune today but your

grandchildren will not enjoy any benefits from that immunity; in fact, they will suffer physically and karmically. Explain your rule package to them now.

Comment: To limit information in this manner is unreasonable to the ordinary person, increases the bias of the determination, and unreasonably limits and constrains the analysis. The benefits obtained as a result of projects 10 to 50 years ago are part of a valid or robust analysis of cumulative impacts for air, climate change, water, fish, flooding, domestic supply, the fishery, and the impoverishment of future generations of Californians.

“B. The RPF shall identify and give the location and description of any known, continuing significant environmental problems effects caused by past Past projects Projects as defined in 14 CCR § 895.1. The RPF who prepares the plan Plan, or the RPF’s sSupervised dDesignee, shall obtain information from plan submitters (timberland or timber owner), and from appropriate agencies, landowners, and individuals about past, and future land management activities and shall consider past experience, if any, in the assessment area related to past impacts and the impacts of the proposed operations, rates of recovery, and land uses. A poll of adjacent land owners is encouraged and may be required by the Director to determine such activities and significant adverse environmental problems on adjacent ownerships.”

Comment: a poll of downstream residents shall be required to determine if domestic water supplies were impaired, flooding increased, channel infilling occurred at any time following or during the operations on past plans. Rate of recovery type data must include prior harvest volume and stocking data for all plans during the past 40 years.

1. Impacts to watershed resources, pursuant to 14 CCR § 912.9 [932.9, 952.9] (c), within the Watershed Assessment Area (WAA) shall may be evaluated based on significant on-site and off-site cumulative effects on beneficial uses of water, as defined and listed in applicable Water Quality Control Plans

Comment: Beneficial uses of water as defined and listed in applicable water quality control plans have not proven sufficient to protect existing domestic supplies or salmonid breeding, feeding and growth ----It is inequitable not to list and poll residents who rely on existing supplies and to provide due process remedy when damage results....ditto for flooding or channel infilling, peak flow increase, decreases in summer flow, water temperature. Furthermore, the Federal Clean Water Act 303(d) TMDL process and antidegradation clause require a margin of safety sufficient to assure attainment of standards sufficient to protect existing uses. Because the FPRs have failed (in Elk River for instance) to protect domestic water

supplies to the federal and Porter-Cologne standards since 1987, CDF needs to step in and conduct the monitoring and enforcement. If nuisance conditions exist at an intake the Plan must remedy the impairment and provide alternative supply, relief from flooding, etc. PRC 740, 4551

BOF states: "Situations where sediment production potential is greatest include: - Sites with high or extreme erosion hazard ratings.
- Sites which are tractor logged on steep slopes.
- Unstable areas. "

Comment: these sites have among the greatest potential to discharge suspended sediment in amounts deleterious;

-Sites where vegetative canopy is less than late seral are subject to increased effective rainfall, peak flow, and elevated pore pressure

-Sites with deranged hydrology or concentrated runoff including skid waterbars, rolling dips, collapsed soil pipes

BOF states: "While increases, if any however, are {likely to be small relative to pre-harvest natural peak flows, extensive canopy removal over a short period of time on a watershed scale can increase peak flow effects on streambank erosion, channel incision, and headward channel extension in erodible landscapes."

Comment: the extensive canopy removal in a group selection area can be expected to result in large (up to100%) increases in effective rainfall and non trivial increases in peakflow, soil pore pressure, soil pipe enlargement or collapse, channel extension, rills and gullies on the GS area. To label these small, is misleading and demonstrates a lack of transparency, enables the professional forester to submit misleading information, and results in a bias determination that knowingly and purposefully externalizes harm onto downstream residents.

Sincerely,

Jesse Noell and Stephanie Bennett, Elk River residents

