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Dr. J. Keith Gilless, Chair
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

RE: EPIC Comments regarding 45-Day Notice of Proposed Rulemaking for Amendments to Board Technical Rule Addendum No. 2 and Cumulative Impacts Assessment Checklist

Chair Gilless and Board Members:

The following comments are presented on behalf of the Environmental Protection Information Center (EPIC), Coast Action Group (CAG), Sequoia Forest Keeper (SFK), Battle Creek Alliance (BCA), and Ebbetts Pass Forest Watch (EPFW) (hereafter referred to as, "the undersigned organizations), concerning the Board of Forestry 45-Day Notice of Proposed Rulemaking for amendments to Technical Rule Addendum No. 2, the Appendix to Technical Rule Addendum No. 2, and the Cumulative Impacts Assessment Checklist (hereafter referred to as the "Proposed Notice"). The undersigned organizations appreciate the opportunity to provide comments on the Notice and respectfully requests written response to all points raised herein.

Summary

The Proposed Notice and accompanying Initial Statement of Reasons (ISOR), and proposed amendment text as presented betray a fundamental lack of recognition on the part of the Board of its statutory obligations under the Forest Practice Act (Act), Rules, and the California Environmental Quality Act (CEQA), and as borne out in well-established caselaw. Further, the Notice and associated constituent parts also betray a fundamental disregard on the part of the Board for now long-since established Legislative mandates and directives that to this point have been almost entirely ignored.

To the extent that the Board, its staff, the Department of Forestry and the regulated-timber industry believe that simply modifying the Cumulative Impacts Assessment Checklist, Technical Rule Addendum No. 2 and the Appendix to Technical Rule Addendum No. 2 in the manner described and contemplated in the Proposed Notice and constituent parts are in any way sufficient in and of themselves to ensure attainment of mandates upon the Board, Department, and regulated industry pertaining to issues of climate change, reduction in greenhouse gas emissions, added sequestration of carbon dioxide, or as pertains to increases in wildfire risk related to timber management, and that somehow CEQA and the lack of thresholds of significance related to these resource areas of concern will salvage the status-quo and business-as-usual, we must inform you in no uncertain terms that you are mistaken on all counts.

Viewed in the best possible light, the Proposed Notice and constituent parts represent little more than a rearranging of the deck-chairs on the Titanic, and viewed in a more realistic and cynical light, are clearly an attempt by the Board and its staff to obfuscate and confound attempts at meaningful reform by allowing landowners, RPFs and Department staff to simply rationalize away issues related to these resource areas of concern through project-by-project qualitative unsubstantiated, "analysis," and "consideration," instead of promulgating actual Rules, regulations, and standards to "ensure," that these areas are adequately considered and accounted for, which is what the FPA clearly demands.

The undersigned organizations oppose the adoption of the Proposed Notice and constituent parts on the basis of the following: (1) The Cumulative Impacts Analysis Checklist, Technical Rule Addendum No. 2 and Appendix to Technical Rule Addendum No. 2 are not, and should not be seen as substitutes for the adoption of actual Rules, regulations, and standards to constrain the regulated timber industry and its enabling Department of Forestry; (2) The amendments in the Proposed Notice fail to contain adequate standards to guide and constrain cumulative impacts assessment, and instead leave assessment of resource areas of concern to landowners and RPFs without expertise in those areas.

In lieu of adopting the Proposed Notice The undersigned organizations recommend that the Board fully initiate the investigative process called for in Assembly Bill 1504 (2010) and as codified at Public Resources Code 4551(b)(1) to evaluate and modify and/or adopt actual, Rules, Regulations, standards, and thresholds of significance to ensure that its Rules contain adequate standards, thresholds and constraints to reduce forestry-related emissions of greenhouse gasses while increasing the capacity and amount of carbon dioxide sequestration and storage in California's private timberlands, so that California's forests and its forest products industry can become part of the solution instead of continuing to be part of the problem as pertains to climate change. It is critical that Board rules be modified, so that the negative impacts of climate change are mitigated and so that California regulated forests become more resilient and continue to support the many co benefits including wildlife, native plants, biodiversity, water, and local economies, including tourism.

Background and General Comments

The Proposed Notice and ISOR for this rulemaking betray an astonishing lack of awareness and understanding of, or perhaps willingness to acknowledge, issues pertaining to evaluation of cumulative impacts related to private forestry activities and mandates of the FPA to

ensure environmental protection, and issues pertaining to the realities of global climate change and State of California legal mandates imparted by the Legislature upon the Board, Department, and regulated timber industry as a consequence of the realities of global climate change. This posture of the Board, while not at all surprising given its history, is categorically unacceptable in the modern era where forestland productivity has been reduced to fractions of former potential under the watch of the Board and Department and the associated consequences relative to the great global crisis of climate change. The undersigned organizations herein provide brief background on the questions of analysis of cumulative impacts in private forestry, and the question of global climate change in relation to State-mandated targets and Legislative mandates imparted to the Board by the Legislature.

Background Surrounding Analysis of Cumulative Impacts and Private Forestry

The modern forest practice legal and regulatory framework is predicated upon the harmonious nature and intent of the FPA and CEQA as firmly articulated numerous times over the decades by the courts of the State of California. CEQA has been referred to in State Courts as the "polar-star of environmental protection," in California. (*See*: *EPIC v. Johnson,* 1985). The FPA of 1973 establishes a duel mandate for the Board, Department, and regulated industry to ensure, "the goal of maximum sustained production of high-quality timber products is achieved, while giving consideration," to resources of concern such as air, water, soil, fish and wildlife, and now, sequestration of carbon dioxide. (*See:* Public Resource Code section 4513(b)). In both the instance of CEQA and the FPA, it is clear that the Legislature intended that environmental resources of concern would be protected, enhanced, maintained, and restored.

CEQA, unlike the National Environmental Policy Act (NEPA), is not merely an informational statute, as it plainly calls upon the State, its agencies, and all entities carrying out "projects" that may have a significant adverse impact on the environment to avoid such impacts or incorporate mitigation measures to substantially lessen any identified potential impacts to a point of less-than-significant. This same basic intent and premise is also embodied in the FPA and the Rules of the Board. (*See:* Public Resource Code Section 21000(g), 21001.1, 21002.1(a), (b), 4512(b), 4513(b), Title 14, California Code of Regulations section 896, 897, 898.)

CEQA, and consequently, the FPA and Board Rules, require consideration, assessment, and either avoidance or mitigation of potentially significant adverse cumulative impacts on the environment. (*See*: Title 14 CCR 15130.). "Cumulative Impacts," is defined at 14 CCR 15355 of the CEQA Guidelines: ""Cumulative impacts" refers to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts."

Modern-day assessment of cumulative impacts was the direct result of the 1983 lawsuit *EPIC v. Johnson*, in which State Courts agreed that THPs and other projects approved by the Department of Forestry and pursuant to Board regulations were subject to all substantive and procedural requirements of CEQA from which the Legislature has not otherwise explicitly exempted the THP administration program. Nearly four decades later, the Board has still not acted to adopt actual Rules, regulations or standards aimed specifically at avoiding or substantially lessening potentially significant adverse cumulative impacts of private timber industry on the quality of the environment of the State in favor of perpetuating the guidance-

based assessment of cumulative impacts now represented as the Cumulative Impacts Assessment Checklist (14 CCR 912.9, 932.9, 952.9), and Technical Rule Addendum No. 2 and the Appendix to Technical Rule Addendum No. 2.

This modern framework is predicated upon allowing the landowner and RPF to determine the methods and standards and information sources to conduct an assessment of cumulative impacts and to use professional judgment in reaching their own conclusions about the potential for significant adverse cumulative impacts on the environment to occur; the Department and the public are thereby left to simply review and attempt to either corroborate or refute the findings of the landowner and RPF, with the CEQA "substantial evidence," and "fair argument" tests as the metric and evaluation criteria. This approach is analogous to the Department of Motor Vehicles and California Highway Patrol allowing motorists to self-police and self-report speeding and other traffic infractions.

The undersigned organizations maintains that the Board is negligent in its duties to ensure environmental protection and either the avoidance or mitigation to less-than significant, potentially significant adverse cumulative environmental effects of timber harvesting and related activities carried out pursuant to Board Rules and CAL FIRE administration of the THP program.

It should be noted that using this approach and framework, the Department has never, to our knowledge, either found that a significant adverse cumulative impacts would occur as a result of implementation of a THP, or ever denied a THP on this basis. Yet, forestland productivity continues to be depleted by over-aggressive harvesting and local communities, economies, and infrastructure are crumbling, virtually every late-seral/old-growth forest associated wildlife species is either listed pursuant to State and Federal Endangered Species laws or warrants such, once-abundant coastal watershed salmon and steelhead populations have virtually disappeared, and every major river and stream system on California's North Coast is listed as 303(d) impaired under the Federal and State Clean Water Acts due to excessive sedimentation with logging and timber harvesting as the primary anthropogenic causes. Still, there have never been, according to the Department of Forestry and/or the regulated industry it enables, a given individual THP that when combined with others, has resulted in a significant adverse cumulative impacts on the environment.

The sad, destructive history of private timber regulation in California under the modern administration of CEQA and the FPA by the Department and Board Rules is that the lack of actual Rules, regulations, and standards to constrain the private regulated-industry in favor of the present-day "evaluation," and "consideration," framework instead of a framework of Rules and regulations that "ensures" protection of the forest and environment has failed all of California and all Californians, and has played a major role in creating the climate change crisis with which we are faced today.

Background on Climate Change and California Global Warming Solutions Act

Climate change is real, climate change is occurring, and climate change will have far reaching effects on our human and natural environment. As the Intergovernmental Panel on Global Climate Change (IPCC 2013) has concluded, "warming of the climate system is

unequivocal, and since the 1950's, many of the observed changes are unprecedented over decades to millennia." This warming was primarily caused by heightened atmospheric concentrations of carbon dioxide and other greenhouse gasses unprecedented in the last 800,000 years. (*Ibid*.) Scientists presently estimate the level of greenhouse gas concentrations in our atmosphere to be in excess of 400-parts-per-billion, well above the 350-part-per-billion threshold recognized by most climate scientists as a safety threshold for planetary life-support systems; greenhouse gasses continue to be emitted into our atmosphere every moment of every day, all around the planet. The effect of continuing greenhouse gas emissions combined with the lag effect of those particulates already emitted but having not yet had an impact on the atmosphere will result in the further altering of the atmosphere, and consequently the life-support systems of the planet, endangering all life on earth, including human life as we know it.

For over a decade, California has embraced the reality of climate change and its devastating impacts, and has taken a lead in undertaking extensive legislative and regulatory commitments to reduce emissions which contribute to climate change as well as for measures to adapt to the unavoidable effects of climate change.

In 2006, the State Legislature passed, and then-Governor Schwartzenagger signed, the California Global Warming Solutions Act, which mandated California State and industry to reduce harmful greenhouse gas emissions contributing to global warming and climate change, back to 1990 levels by the year 2020. Last fall the State Legislature acted again by passing SB 32, which was signed by Governor Brown into law. SB 32 up's the ante on greenhouse gas reductions by mandating a State-wide reduction to forty-percent below 1990 emissions levels by the year 2030.

In 2010, the Legislature also adopted AB 1504 (Skinner), which imparted a mandate upon the Board of Forestry to ensure that its Rules, regulations and standards for the private timber industry were adequate to realize the industry's contribution to attainment of State-wide greenhouse gas reduction and carbon dioxide sequestration targets, and established an interim carbon sequestration goal of 500 million metric-tons of carbon per-year. (*See*: PRC 4512.5, 4551.). To date, the Board has taken no action to discharge this Legislative mandate. Given that the interim 500 million metric-tons per-year target was tied to attainment of 2020 targets and not the more aggressive 2030 targets, the Board, and by extension, the regulated-timber industry are severely behind the ball on ensuring greenhouse gas emissions reductions and added carbon dioxide sequestration at rates sufficient to contribute to achievement of greater State-wide mandates and objectives.

Forests are our best weapon to combat the impacts of climate change. As the 2014 First Update to the AB 32 Scoping Plan (2014 Update) adopted by the California Air Resources Control Board (CARB) recognized, our forests "must be managed to ensure that they provide net carbon storage in the face of increased threats from wildfire, pests, disease and conversion pressures" and that "[q]uantitative planning targets must be set to increase net forest carbon storage in California in the near-term, mid-term, and by 2050 . . . Forest carbon inventory and assessments should be continually maintained and refined to support this effort, and appropriate measures, funding, and incentives must also be established." (CARB 2014). However, to-date, the Board has done nothing to either evaluate its Rules or to undertake in any serious way a method for accounting for the balance between carbon dioxide emitted and that sequestered as a

consequence of the activities of the private, regulated-timber industry it enables. What's more, California's Draft Forest Carbon Plan (January 2017), contains no mandates for emissions reductions, no measures to secure and ensure added forest sequestration and storage of carbon dioxide above and beyond the status-quo, and no repeatable means of assessing the carbon accounting balance between emissions and sequestration as a consequence of the activities of the private, regulated-timber industry.

In 2010 it was believed and even codified in statute, that the private, regulated-timber industry was a net-sequestration source of carbon dioxide in the State. (*See*: PRC 4512.5(b)). However, more recent research and investigation has uncovered evidence that this premise is, and always has been, incorrect.

While California's forests have the potential to act as carbon sinks—sequestering more carbon than they emit—today, California's forests are carbon sources, emitting more carbon than they take in, according to the CARB assessment of California's forest and rangeland greenhouse gas inventory. (Battles et al. 2014.) The same was found in an assessment of State forest carbon stocks conducted in *Aboveground live carbon stock changes of California wildland ecosyste*ms (Gonzales et al. 2015).

Despite the fiction spun by the private, regulated-timber industry and its enabling Department of Forestry, the best available science now suggests that, due to industrial, plantation-style logging, California's forests are emitting more carbon dioxide as greenhouse gas, than they are capturing and storing as sequestration. According to Battles et al. 2015:

"[B]etween 2001 and 2008, the total carbon stored in the forests and rangelands of California decreased from 2,600 million metric tons of carbon (MMTC = 106 MgC) to 2,500 MMTC (Table 3). Aboveground live carbon decreased ~2% and total carbon decreased ~4%. Given our estimate of uncertainty (95%CI = ± 26 MMTC), a stock change of 100 MMTC represents a statistically significant loss of carbon at an annual rate of approximately 14 MMTC y-1."

The majority of the decline in stored carbon dioxide in our forests (61%), noted in Battles et al. 2015 was caused by a reduction in the amount of carbon stored per area, i.e., fewer larger, older trees and forests with native ecological assemblages and structure, a primary consequence of industrial, plantation-style logging. Sadly, this comes as absolutely no surprise.

Concerns about the rapid depletion of California's forests and the vast reductions in its once-seemingly-limitless productive capacity have been around as long as there's been a timber industry in the State. In 1992, Dr. Hans Berkhardt conducted an investigation into dwindling forestland productivity on what were formerly Louisiana-Pacific Corporation timberlands in Mendocino County, and found that total forest biomass had been reduced to at-best ten to fifteen percent of pre-European contact estimates. (Burkhardt 1992).

The loss of forest biomass and the shrinking of California's forestland productive capacity can easily be tied to the Board's long-standing failure to adopt adequate Rules and standards to ensure that the core principle of the FPA is achieved; attainment of Maximum Sustained Production of High Quality Timber Products on a given ownership. It took the Board nearly 20 years to adopt any Rules or standards to govern and ensure attainment of MSP, and

those only as a result of litigation; today, the Board Rules governing MSP at 14 CCR 913.11 [933.11, 953.11] continue to allow for overharvesting and forestland productivity depletion, particularly on large "industrial" ownerships of 50,000-acres and greater. No clearer example of this exists than the plain-as-day disparity between MSP option-(a) for landowners 50,000-acres and greater, and MSP option-(b) (Sustained Yield Plan).

First, the Board has never at any time created a definition for, or promulgated any Rules or standards to ensure that attainment of MSP on a given ownership results in furnishing of "high-quality timber products." Second, MSP option-(a) perpetuates the same failures as the Cumulative Impacts Assessment and associated Technical Rule Addendum and Appendix by leaving it entirely up to the landowner to determine the level of MSP and methods of attaining MSP, with no clear measures to allow the Department, or the public-at large, to review, monitor, evaluate, constrain, or otherwise ensure that MSP and the furnishing of "high-quality timber products" is realized on ownerships of 50,000-acres or greater when utilizing that option.

The result is that forestland productivity, and, by association, total forest biomass and the capacity of our forests to capture and store or sequester carbon dioxide from the earth's atmosphere, are at their most compromised at the most inopportune moment in human history.

Specific Comments Regarding the Proposed Notice

(1) The Proposed Notice and Rulemaking are not a Substitute for Rules, Regulations, and Standards

The Proposed Notice and rulemaking are not and should not be seen as substitutes for Board responsibilities to promulgate Rules, regulations, and standards to guide and constrain private timber harvesting and industry and to ensure environmental protection through these. The entire notion of a Technical Rule Addendum in place of promulgating actual regulations is quizzical at best. In fact, the undersigned organizations are unaware of any other State Agency responsible for promulgating Rules, Regulations, and standards that utilizes a Technical Rule Addendum to do so. In reviewing programs of other State Agencies, EPIC was unable to find a single other agency or Board that either makes reference to, or that utilizes a Technical Rule Addendum in place of actual Rules, regulations, and standards. This naturally begs the question, what is a Technical Rule Addendum? Further, it also begs the question, under what statutory authority was the Technical Rule Addendum framework for cumulative impacts assessment adopted and under what authority does the Board believe it can rely upon a Technical Rule Addendum instead of actually adopting clear and enforceable Rules, regulations, and standards?

The California State Legislature has not, to our knowledge, created a framework within the FPA that allows a regulatory scheme that is guidance-based and that allows timberland owners and RPFs to create and offer their own standard of information, analysis, assessment, consideration, and most importantly, conclusions; all of these are clearly the responsibility of the Board and Department, based on plain reading of relevant statute as cited above. While the modest changes to the cumulative impacts analysis checklist to make plain the fact that cumulative impacts assessment is a regulatory requirement is an improvement, it also betrays a fundamental failure, on the part of the Board and Department as the regulatory entities with

technical expertise and legal responsibilities to regulate and constrain the activities of the private timber industry, to effectively regulate and constrain through the promulgation of actual Rules.

In this specific instance as pertains to the purpose and need for the Proposed Notice and rulemaking it is expressed that the action is proposed in order to discharge legislative requirements for consideration of greenhouse gas emissions and to assess potential increases in fire risk from anthropogenic activities; at present, the actual FPRs do not contain Rules, regulations, standards, or thresholds of significance or either of these resource areas of concern. The Proposed Notice and rulemaking would perpetuate the same errors of the Board of the past by simply requiring "consideration" by timberland owners and RPFs, and allowing these entities to make determinations about methods, outcomes, and needed constraints, without the Board even establishing side-boards as regulations against which to evaluate the process and outcomes attained by timberland owners and RPFs, and without adopting thresholds of significance to allow for the Department and the public at-large to have criteria against which to measure, evaluate, and/or constrain the activities of private timberland owners.

In 2010, the State Legislature imparted a very clear mandate upon the Board to evaluate its Rules and regulations for private timberlands to ensure that these are adequate to realize increased sequestration of carbon dioxide sufficient to meet or exceed state-established GHG and carbon sequestration mile-posts established pursuant to AB 32, the California Global Warming Solutions Act of 2006. To date the Board has completely ignored this mandate. Consequently, the Proposed Notice and rulemaking are insufficient because they do not propose to adopt Rules, regulations, standards, and thresholds of significance aimed at discharging this Legislative mandate. Unless and until this is done, the Proposed Notice and rulemaking, if adopted, would at best require cumulative impacts analysis for GHG reduction, carbon sequestration, and awareness of increases in fire risk potential, but would be utterly meaningless other than as the conduct of a qualitative paper exercise in the absence of commensurate Rules, regulations, standards, and thresholds of significance established by the Board.

(2) <u>The Proposed Notice and Rulemaking Leaves to Discretion and Judgment of Timberland Owners and RPFs the Conduct of Analysis that may be Outside Professional Expertise</u>

The Proposed Notice and rulemaking fail to contain adequate direction and specificity to ensure a credible analysis is produced, and leaves to timberland owners and RPFs the ability to choose and create pathways to analysis and conclusions pertaining to resource areas of concern that are likely outside the professional expertise of many RPFs. For example, as pertains to assessment of GHG impacts, page 26 of 28 of the Proposed Rule Pleading under G for GHG assessment on lines 8-9 suggest that, "[a]ny one or a combination of the following options can be used to assess the potential for significant cumulative GHG effects."

It is difficult to understand how the Board perceives this will be implemented in practice without resulting in a clear lack of consistency of production, application, analysis, and outcomes that can afford the Department adequate regulatory checks and balances, or to allow the general public to have any confidence in the outcomes. Further, Public Resources Code section 752(b) plainly calls out that RPFs can only perform duties pursuant to an RPF license in areas which the RPF has expertise and in which the RPF is "fully competent as a result of training or expertise."

The undersigned organizations are unaware of any forestry school program in the State that offers a combination of mensuration, GHG assessment, carbon dioxide storage, and the assessment of these to determine if or whether a significant adverse cumulative impact may occur as a result of forestry operations as part of its curriculum. How, then can the Board impart through the Proposed Notice and Rulemaking a requirement of RPFs preparing THPs to conduct such an assessment, or allow RPFs to determine or combine pathways to attain this analysis and assessment?

The problem here, as articulated elsewhere herein, is the overall framework for cumulative impacts analysis, whereby the Board leaves up to timberland owners and RPFs with vested financial interest in outcomes, but likely no expertise in analysis of cumulative impacts, to conduct such and analysis and postulate their own conclusion, which the Department and public at-large are then left to ponder without standards against which to measure the analysis, or any clear legal or regulatory recourse in the event these are deficient.

Conclusion

The undersigned organizations recommend that the Board shelve the present Proposed Notice and rulemaking effort and that it get down to the business of discharging its legislative mandates under the FPA to adopt Rules, regulations, standards, and quantifiable thresholds of significance pertaining to the affected resource areas of concern addressed in the Proposed Notice. EPIC further recommends that the Board, its staff, and the Department get on with the reality of climate change and the necessity to change the way forestry is conducted in California and begin to proceed on this premise instead of joining the pathetic climate-denial perpetuated by the regulated timber industry. Climate change and State-mandates to tackle climate change, make it clear that the time of the status-quo and business-as-usual are over in California; it is high time for the Board, the Department, and the regulated-industry to either get on board, or get out of the way.

Respectfully Submitted,

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