

BOARD OF FORESTRY AND FIRE PROTECTION

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The following constitutes the Board of Forestry and Fire Protection Forest Practice Committee's draft responses regarding policy and legal questions formulated from public and agency comments during Phase 1 of the Committee's review of the "Threatened and Impaired Watershed" rules (T/I rules).

Key Question #10 (and others): The appropriate level of "consideration" for forest values mandated by the FPA.

The Legislature has found and declared that the state's forest resources and timberlands are valuable and those resources should be managed by balancing the public's need for timber and other forest products with the public's need for watershed protection, fisheries and wildlife, and recreation opportunities now and in the future. (Pub. Resources Code § 4512.) A distinction was made by the legislature between timberlands and forest resources as separate entities and that their "utilization, restoration and protection" are of "great concern". The importance of lands capable of producing forest products (timberland) by itself is an important and distinct element of the legislature's findings. Timberland is also the source of forest resources so the two terms are also interdependent. (Id.)

Timberland means land capable of growing a crop of trees while forest resources is all encompassing of the values associated with this timberland. The legislature declared that "prudent and responsible forest management" will be "calculated" to serve the "public's need" for timber and forest products while also giving consideration to the "public's need" for other forest resources "alike in this and future generations". The "alike in this and future generations" implies that the products and values will not decline from this to future generations. (4512c) The legislative language did not separate out the relative importance of forest products and other forest resources.

4513a of the FPA specifically addresses the goal of assuring that "...the productivity of timberlands is restored, enhanced and maintained." The productivity of timberlands includes all of the forest resources and products that come from those lands. 4513b addresses the need to maximize the production of timber products while "giving consideration to" other values. This section again separates out timberlands as producers of timber products from other forest values or resources which may not always come from timberlands, as defined, but could come from both timberlands and forested lands. The legislative language in PRC 4512 recognized that all of these values were important without specifying which one takes priority. The intertwined nature of all forest values was recognized and highlights the role of the Board to try and find the balance that optimizes all of the benefits of the forest. Words such as "calculate, give consideration to, while providing, maximum sustained, and where feasible" all characterize the depth to which the Board is to use their judgment in crafting rules to achieve the legislature's intent.

The Legislature charged the Board with the duty to adopt district forest practice rules and regulations to assure the continuous growing and harvesting of commercial forest tree species *and* to protect various environmental resources. (Pub. Resources Code §4551. Emphasis added.) PRC 4552 also directed that rules be based on factors that “affect the present and future condition of timberlands ...” The legislature recognized the complexity of this mandate and gave broad discretion to the Board to achieve their goals. The Board must optimize the productivity of the forest in order to find the correct balance between competing uses of timberlands in order to achieve this mandate.

Key Questions #15 and #16: Consistency of Board rules with other legal mandates

The Board will determine to what values it is requiring equal consideration and will make it consistent throughout the rule. It could be just beneficial uses of water or could also be beneficial functions of riparian zones, etc. The Board can require any action necessary to fulfill its duty to “assure the continuous growing and harvesting of commercial forest tree species *and* to protect various environmental resources.” (Pub. Resources Code § 4551.) See response to Key Question #10.

Key Question #17: Scope of protection and restoration measures

See answer to #10 for legal authority for rule 916.2

Key Questions #20, #21, #33, #34, #40 and #41: The authority and role of “Restoration” in the FPA and rules

The Board is charged with protecting environmental values now *and* “*alike in future generations*”. (Pub. Resources Code §§ 4512(c) and 4551, emphasis added.) Thus, to the extent that restoration is necessary to protect the public’s need for wood products, watershed protection, fisheries and wildlife, and recreation opportunities now *and in the future*, the Board is authorized to formulate rules that include restoration. Restoration is recognized as a public concern and goal in PRC 4512 and 4513. Timberland productivity can broadly be interpreted to include all of the values produced from the land. Where feasible, the legislature’s intent is clearly to restore, enhance and maintain the productivity of timberland and thus the forest resources associated with timberland. (PRC 4513(a)) The Board’s responsibility is to specify where restoration will take place and to what condition a resource will be restored.

Key Questions #22: Minimum vs. Standard protection measures

The Board finds there is no legal reason why it cannot require “minimum” protection measures rather than “standard” protection measures. Standard measures are the minimum required unless provisions are made for exceptions, in lieu or alternative rules are proposed.

Key Questions #44, #45, #46, #47, #48, #49, #50 and #51: What are the limits of the Board’s authority?

The Board has authority for promulgating rules using the findings, intent and directives from the legislature. (See, Pub. Resources Code §§ 4512 , 4513, 4551,4552 and 4553.)