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## North Coast Regional Water Quality Control Board

March 25, 2015

Stuart Farber, Chair  
Mary Rickert  
Mark Andre  
Management Committee, Board of Forestry and Fire Protection  
P. O. Box 944246  
Sacramento, CA 94244-2460

Dear Mr. Farber, Ms. Rickert, and Mr. Andre:

Subject: Comments on the Proposed Working Forest Management Plan

File: Timber, General

Assembly Bill 904 created a new alternative for managing “working forest” timberlands up to 15,000 acres in size. The Bill states that “It is the policy of the state to encourage prudent and responsible forest resource management of nonindustrial timberlands by approving working forest management plans in advance and authorizing working forest timber harvest notices to be filed ministerially.” Working Forest Management Plans (WFMPs) are intended to build on the model provided by nonindustrial timber management plans.

Over the course of the last fifteen months, North Coast Regional Water Quality Control Board (Regional Water Board) staff have participated in the discussions of the Management Committee of the Board of Forestry and Fire Protection (BOF or Board) and have worked cooperatively and collaboratively with the Board, other agencies, and members of the public on the development of the proposed WFMP rule language.

On several occasions during those discussions, we expressed our concern with the language of proposed section 1094.6(i), a subsection of 1094.6, “Contents of WFMP.” Most of the section was duplicated directly from the statutory language of PRC 4597.2(d), but with some seemingly minor, yet significant changes. The two sections are reproduced side-by-side below to highlight the differences:

## Statutory Language:

PRC 4597.2(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. This subdivision shall not apply to the extent that the registered professional forester provides documentation to the department that the working forest management plan is in compliance with similar requirements of other applicable provisions of law.

## Proposed WFMP Rule Language:

14 CCR 1094.6(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.

Please note the period after “water quality requirements” and the beginning of the next sentence, “The WFMP shall also include an erosion control implementation plan...” in the proposed rule language. In the statute, the erosion control implementation plan is listed as a part of the “description and discussion of the methods to be used to avoid significant sediment discharge to watercourses from timber operations.” In the proposed rule language, the erosion control implementation plan is separated and set apart from the description and discussion of methods to avoid significant sediment discharge. It is something that “the WFMP shall also include.”

We agree that separating the two sections makes logical sense because both the statute and proposed rule cover two distinct and very different items. The first is a requirement to describe and discuss the methods to be used to *avoid* significant sediment discharge to watercourses. The second is a requirement for an erosion control management plan. However, since the erosion control management plan is premised on “significant sediment discharge” and “structures or sites that have the potential to discharge sediment” in the statute, it should retain the same connection in the proposed rule language.

The current wording of the proposed rule language breaks this connection because it uses an undefined term, “significant existing erosion site(s).” The problem is that “significant existing erosion site(s)” is undefined and it could be anything. In contrast, since “significant existing or potential erosion site” is defined in 14 CCR 895.1, it is *restricted* to the *strict* interpretation of the definition. It is important to point out that since “significant existing or potential erosion site” is a single defined term, no individual piece can be used out of context of the whole term. In other words, since the words “or potential” are part of the defined term, they serve to *restrict* the meaning and possible interpretation of the term, not broaden it. This, we believe, precisely conforms to the legislative intent.

There is one other problem that appears to have been overlooked. Although the statute uses the term “erosion control implementation plan” once, and the proposed rule language uses the term three times, the contents of an erosion control implementation plan is never defined. We believe this could be remedied using a version of the road inventories required in 14 CCR 923.1(e) that would be modified to include the statutory requirements of “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.”

If you or your staff have any questions regarding these comments, please contact me at 707-576-2756.

Sincerely,

David Fowler  
Regional Water Board staff  
Non-Point Source and Surface Water Protection Division

Attachment: Attachment “A”, Proposed contents of an Erosion Control Implementation Plan

## Attachment "A"

### Proposed contents of an Erosion Control Implementation Plan

[modified from 14 CCR 923.1(e) to include statutory requirements of PRC 4597.2(d)]

14 CCR 1094.6(--)) In preparing an erosion control implementation plan, the RPF or supervised designee shall: (i) locate and map significant existing and potential erosion sites and (ii) specify feasible treatments to mitigate significant adverse impacts from logging roads, landings, skid trails, crossings, or any other structures or sites that have the potential to produce significant sediment discharge.

(1) The RPF shall evaluate the logging area for evidence of significant existing and potential erosion sites related to logging roads, landings, skid trails, crossings, or other structures or sites.

(2) For significant existing and potential erosion sites identified pursuant to 14 CCR § 1094.6, subsection (--)(1), the RPF shall consider the following key factors as part of developing necessary treatments:

(A) Type of site (logging road, landing, skid trail, crossing, or other structures or site), site location, and use of each site.

(B) Age of the site and the history of sediment delivery from the site.

(C) Beneficial uses of the watercourse or lake and sensitive conditions potentially affected by the site including, but not limited to, watercourse classification and presence of listed anadromous salmonids.

(D) The hillslope grade, grade of skid trail, road or crossing approaches and the gradient of the stream channel.

(E) The erodibility of hillslope material.

(F) For logging roads, the length of hydrologic connectivity of a road segment, the physical properties of the connected segment and the presence or absence of an effective sediment filter strip.

(G) Site-specific information regarding the condition of and location of all existing or potential sediment sources including, but not limited to: watercourse crossings, road approaches, ditch relief culverts, road surfaces, road cuts, road fills, inboard ditches, through-cuts, landings, skid trails, or other structures or sites.

(3) The erosion control implementation plan shall include a list of the significant existing and potential erosion sites identified pursuant to 14 CCR § 1094.6, subsection (--)(1), which have feasible treatments. This list shall include the following information:

(A) A map showing the location(s) of significant existing and potential erosion site(s) with a unique identifier for each site.

(B) Brief description of present condition of the mapped significant existing or potential erosion site.

(C) Brief description of proposed treatments for the mapped significant existing or potential erosion site.

(D) Items (B) and (C) above can be provided in tabular form as part of the plan.

(4) Where feasible treatments for significant existing or potential erosion sites are proposed, the RPF shall describe in the plan a logical order of treatment.