

State Water Resources Control Board

January 21, 2018 ~~2018~~ 2019 *M.I.*

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**BOARD OF FORESTRY AND FIRE PROTECTION**

Dear Dr. Gilles:

Subject: Comments on Proposed Revisions to the Working Forest Management Plan

File: Timber, General

Senate Bill 901 (SB 901) made extensive changes to statute relating to a wide range of forest activities. Among other changes, the Bill revised portions of Public Resources Code (PRC) Section 4597, the Working Forest Management Plan (WFMP). Some of the revisions include: explicitly allowing more than one timberland owner to submit a single WFMP; reducing the maximum size of a WFMP from 15,000 acres to 10,000 acres; restricting a WFMP to a single CALWATER 2.2 hydrologic area; and changes to the erosion control implementation plan.

Previously, PRC 4597.2(d) required a WFMP to include an "erosion control implementation plan" (ECIP) as part of the contents of the WFMP, and then PRC 4597.11(l) required the ECIP to be updated as part of the Working Forest Harvest Notice (WFHN).

PRC 4597.2. Working forest management plans; contents. A working forest management ... shall include all of the following information:

...

(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.

**PRC 4597.11. Working forest harvest notice...**

...

(l) An update on erosion control mitigation measures for the harvest area and any appurtenant roads if conditions have changed since the working forest management plan was approved and a certification from the registered professional forester that no additional listings of water bodies to the Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313(d)) list have occurred on the lands of the plan.

This was implemented in the Forest Practice Rules by requiring a Road Rules 2013 road inventory with the plan submittal and then a full sediment source inventory with the WFHN:

**14 CCR 1094.6 Contents of WFMP**

The WFMP shall ... contain the following information:

...

(j) An erosion control implementation plan with information as required by 14 CCR § 923.1(e). 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.

**14 CCR 1094.8 Working Forest Harvest Notice Content**

...

(n) An updated erosion control implementation plan that reflects erosion control mitigation measures for the harvest area and any appurtenant roads if conditions have changed since the WFMP was approved and a certification from the RPF that no additional listings of water bodies to Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313(d)) list have occurred on the lands of the Plan. Additionally, the updated Erosion Control Implementation Plan for the Working Forest Harvest Notice shall include disclosure of erosion sites from skid trails, skid trail 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 updated erosion control implementation plan shall also include a schedule to implement erosion controls that prioritizes these significant existing erosion site(s).



Subsequently, SB 901 revised PRC 4597.2(d) to align the statute with the intent of the language in the Forest Practice Rules:

PRC 4597.2. Working forest management plans; contents. A working forest management ... shall include all of the following information:

...

(d) All necessary information shall demonstrate compliance with Article 12 (commencing with Section 923) of Subchapter 4 of, Article 11 (commencing with Section 943) of Subchapter 5 of, and Article 12 (commencing with Section 963) of Subchapter 6 of, Division 1.5 of Title 14 of the California Code of Regulations.

SB 901 made no revisions to the requirements of the WFHN.

The *Potential Revisions to 14 CCR § 1094 (Working Forest Management Plan) Pursuant to SB 901, January 22, 2019*, currently under consideration by the Board of Forestry and Fire Protection (Board of Forestry) proposes to revise the WFMP content language to match the statute:

14 CCR 1094.6(j) All necessary information to demonstrate compliance with Article 12 (commencing with Section 923) of Subchapter 4 of, Article 11 (commencing with Section 943) of Subchapter 5 of, and Article 12 (commencing with Section 963) of Subchapter 6 of, Division 1.5 of Title 14 of the California Code of Regulations, as applicable.

This revision makes no real operational change since it states the same meaning as the previous 14 CCR 1094.6(j), except in a more precise form.

Although SB 901 made no changes to the WFHN statutory language, the proposed revisions include changes to the WFHN regulatory language. Similar to the WFMP content section, the proposed revisions generally appear to more closely align the regulatory and statutory text. The proposed revision contains two options which differ only in the way in which the Road Rules road inventory is reference (Option 1 copies the language from 14 CCR 1094.6(j), while Option 2 uses a more abbreviated form).

Although the proposed revisions retain the requirement to include disclosure of erosion sites from skid trails, skid trail crossings, or any other structures or sites that have the potential to discharge sediment, it deletes the requirement to include a feasible treatment actions or an implementation schedule to address the sites. Nor is it clear whether the disclosure of erosion sites in a WFHN is subject to the requirements of 14CCR 923.1(e)5, which states, "Where feasible treatments for significant existing or potential erosion sites are proposed, the RPF shall describe in the plan a logical order of treatment." We believe that a simple statement in the proposed rule language should be added to require that RPFs propose treatment actions at erosion sites where feasible and a schedule to implement those treatment actions. Another option would be to simply require that feasible treatment actions for erosion sites identified in the area of a WFHN be implemented during the life of the WFHN.

We are also concerned that only those erosion sites “attributable to timber operations” must be inventoried. Addressing only “sites that have the potential to discharge sediment attributable to timber operations” is problematic and does not meet the requirements of Porter-Cologne. Anthropogenic sediment sources within the plan area are likely to be impacted or exacerbated by timber operations, whether or not they are directly “attributable,” and existing Regional Water Board Waste Discharge Requirements make no such distinction. In order to be consistent with applicable water quality objectives and provide for the protection of the applicable beneficial uses of water, the words “attributable to timber operations” should be deleted. This change will align WFMP activities with the proposed language in 14CCR 1094, which states, “Working Forest Landowners shall comply with all applicable regulatory requirements of the State Water Resources Control Board and the appropriate Regional Water Quality Control Board.”

Another shortcoming of the proposed WFMP rule package is that there is no mechanism to ensure that all controllable sediment discharge sources throughout the project areas will be identified and treated within a specified timeframe. There may be areas within the WFMP in which WFHN is never submitted that contain sediment sources. As such, there would be no mechanism under the proposed rules that would result in identification and treatment of these sites. Therefore, the proposed rules do not fully comply with the North Coast Regional Water Quality Control Board’s Total Maximum Daily Load Implementation Policy Statement for Sediment Impaired Receiving Waters in the North Coast Region (Sediment TMDL Implementation Policy, Resolution No. R1-2004-0087) or the State’s Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Implementation Policy).

In 2004, the Regional Water Board adopted the Sediment TMDL Implementation Policy, which states that Regional Water Board staff shall control sediment pollution by using existing permitting and enforcement tools. The goals of the Policy are to control sediment waste discharges to impaired water bodies so that the TMDLs are met, sediment water quality objectives are attained, and beneficial uses are no longer adversely affected by sediment. Nonpoint source activities permitted by the Regional Water Board must ensure that all control sediment discharge sources are identified and treated within a specified timeframe.

Regional Water Boards must regulate all nonpoint source of pollution, using the administrative permitting authorities provided NPS Implementation Policy, which requires that “all current and proposed nonpoint source discharges must be regulated under WDRs, waivers of WDRs, a basin plan prohibition, or some combination of these tools”. Nonpoint source control implementation programs must include the following five key elements:

**KEY ELEMENT 1:** An NPS control implementation program’s ultimate purpose shall be explicitly stated. Implementation programs must, at a minimum, address NPS pollution in a

manner that achieves and maintains water quality objectives and beneficial uses, including any applicable antidegradation requirements.

**KEY ELEMENT 2:** An NPS control implementation program shall include a description of the management practices and other program elements that are expected to be implemented to ensure attainment of the implementation program's stated purpose(s), the process to be used to select or develop management practices, and the process to be used to ensure and verify proper management practices implementation.

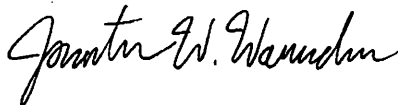
**KEY ELEMENT 3:** Where a RWQCB determines it is necessary to allow time to achieve water quality requirements, the NPS control implementation program shall include a *specific time schedule*, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements.

**KEY ELEMENT 4:** An NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different management practices or other actions are required.

**KEY ELEMENT 5:** Each RWQCB shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program's stated purposes. A RWQCB action to approve or endorse an NPS control implementation program shall contain a general description of the course of action or actions to be taken if verification/feedback mechanisms indicate or demonstrate that the program is failing to achieve its stated objectives.

In order for the WFMP rules to fully comply with Porter-Cologne and applicable water quality requirements, we believe that the rules should require a comprehensive inventory of sediment discharge sources and an implementation schedule for the entire WFMP to ensure that a water quality standards are met within a specific time schedule.

Again, thank you for the opportunity to review and comment. If you or your staff have any questions or concerns regarding our comments, or would like additional information, please contact David Fowler (707-576-2756) or Jim Burke (707-576-2289) of our staff.



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Cc: Matt Dias, Executive Officer, Board of Forestry