



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

July 12, 2024

Ms. Edith Hannigan
California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

RE: Utility and Public Agency Right of Way Exemption Amendments

Dear Ms. Hannigan:

On behalf of the Rural County Representatives of California (RCRC), we appreciate the opportunity to provide these comments on the Utility and Public Agency Right of Way (ROW) Exemption Amendments (Amendments), dated July 23, 2024, currently under development. RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties.

RCRC believes utility vegetation management is a crucial tool to reduce wildfire risk and improve energy reliability. Our communities have long suffered from wildfires and the resulting power outages intended to reduce the risk of utility-caused wildfires. As such, we are interested in efforts to facilitate utility vegetation management for the safe, continuous delivery of power. For this reason, we support the Board's effort to establish an easier-to-navigate process for utility vegetation management work. As our counties have struggled with utility vegetation management operations for several years¹, we welcome the opportunity to establish durable expectations for utilities and impacted landowners.²

Over the last several years, PG&E has often protested against removing felled wood as part of their vegetation management program because they argue the wood is the

¹ Our counties have been struggling with public safety impacts caused by poorly conducted utility vegetation management operations since 2020. The specific nature and circumstances of the problems have changed over the last four years, but the overarching concern has been the general unwillingness of a particular regulated utility to remove trees and branches cut during utility vegetation management operations. Felled logs left in place can create a host of safety risks for property owners, firefighting personnel, and communities. As felled trees dry out, they increase the fuel load, thereby exacerbating the risk and severity of wildfires. Other risks include trees rolling down slopes into roads, thereby impeding emergency access and egress as well as normal traffic flow.

² We recognize that the utilities have made significant improvements in dealing with felled wood over the last year – largely in response to the tremendous concerns raised by numerous local governments and after involvement of several state regulatory agencies. However, we have also experienced improvements in the past that were followed by dramatic regressions. This is why there is such a serious need to establish durable expectations for utility vegetation management work.

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landowner's property. Many landowners, however, repeatedly requested that the felled wood be removed because of the danger it poses and/or the inability for the landowner to manage the felled wood himself or herself. It is not uncommon for landowners to consent to PG&E's extensive tree work on their property under the condition that any debris be removed or chipped. We appreciate the balance struck by the proposed Amendments to preserve the landowner's ability to retain felled wood while otherwise requiring the utility to remove material that creates fire/safety risks or that impairs the creation/maintenance of defensible space.

RCRC and many others expressed strong concerns and objections to portions of the initial version of Amendments released earlier this year. We appreciate the Board's robust public discussions, constructive engagement by the Board members, and responsiveness to the issues and considerations raised by stakeholders over the last several months. Many of the changes ultimately incorporated into the July 23, 2024 draft address concerns raised about the impact utility vegetation management operations have had on maintenance of defensible space, fuel load, fire safety, and the externalization of mitigation costs from utilities to landowners. We strongly support the changes that address those concerns.

We recognize that the requirements proposed in 14 CCR 1114(f) for management of slash and woody debris will impose costs on utilities; however, we maintain those costs are appropriately borne by the utilities as they derive substantial fire safety and liability protections from fuel reduction work. Landowners simply cannot bear the costs of managing slash and woody debris, nor do they have adequate legal remedies available to successfully force utilities to clean up any hazards left after the conclusion of vegetation management operations. We reiterate our willingness to continue working with utilities to ensure that the California Public Utilities Commission allows full cost recovery for these activities.

Increased Flexibility for Utilities to Use Notice of Exemption Process

RCRC appreciates the Board's effort to make the Notice of Exemption process more useful for utilities by providing greater flexibility for the situations in which the Notice can be utilized. We appreciate the Board's efforts to facilitate additional operations during the winter period, to allow work to be conducted within a Watercourse and Lake Protection Zone under certain circumstances, and to allow utilities to rely upon incidental take permits/statements, natural community conservation plans, or habitat conservation plans to conduct work that may otherwise impact sensitive species. These changes will better enable to utilities to conduct vital vegetation management work. When combined with the new post-harvest treatment requirements (discussed below), these Amendments will mitigate against utilities externalizing their risks to landowners.

Additionally, we believe other proposed changes to the Notice of Exemption will reduce administrative burdens on utilities, including extending the operative period for notices from one to three years, providing flexibility on when notices must be filed and the level of detail they must contain, and allowing progress reports to be filed on a rolling basis in lieu of filing a completion report. These changes better align regulatory expectations with the reality of how these ongoing maintenance projects are carried out.

Clarifying Function of Right of Way Widths

RCRC appreciates the Board clarifying the function served by the table of right-of-way widths. When PG&E suggested increasing the widths of existing utility rights of way, we and other stakeholders inquired as to just what function the table serves. In response, the proposed Amendments clarify that the table of right-of-way widths merely identifies the areas eligible for the ministerial Notice of Exemption, confers no property rights to utilities, and that rights to physical access must still be derived from other, separate and independent legal authority.

Surface Fuels Within Defensible Space Perimeter

RCRC strongly supports the proposed requirements contained in 14 CCR 1114(f)(3)(A) that utilities must chip, burn, or remove slash and woody debris exceeding one inch in diameter that is within 100' of a structure (or a greater distance as required by a local jurisdiction). The proposed language reflects current requirements that landowners must maintain defensible space around structures. The landowners who would be impacted (and who would benefit from this section) are often older adults, many of whom live on fixed/low incomes such that they are physically and financially incapable of managing the felled wood and residue left on their properties. Over the last several years, some landowners (and local governments) spent considerable resources to comply with PRC 4291 defensible space requirements. In some cases, property owners who passed defensible space inspections failed subsequent inspections because of trees cut down and left in place by PG&E vegetation management crews. This section ensures that utility vegetation management shall not frustrate the maintenance or creation of defensible space.

Surface Fuels Within 200' of Roads or that May Impede Access, Egress, or Public Safety

RCRC also supports the treatment requirements proposed in 14 CCR 1114(f)(3)(B) and (C). Those provisions require utilities to chip, burn, or remove surface fuels within 200' of the edge of any road accessible to the public (or that may impede access, egress, or public safety) within 45 days. This will ensure that utility vegetation management activities do not compromise local or state efforts to reduce roadside fuels and will not create hazardous conditions in which felled wood may fuel fires, block paths or driveways, or roll into roads, thereby frustrating egress in the event of an emergency.

Other Woody Debris and Slash

RCRC supports in concept the treatment requirements proposed in 14 CCR 1114(f)(3)(E), but strongly urges modifications to the language. As currently drafted, the proposal requires woody debris not covered by any other management requirements to be lopped, chipped, burned, removed, or treated within 45 days if either the location or physical arrangement of the wood "constitutes a hazardous accumulation of flammable materials with enhanced risk of increased wildfire ignition, spread rate, duration, or intensity." We support the spirit of this proposal; however, it is unclear who would make such a determination or what would constitute a "hazardous accumulation of flammable materials." We preferred the previously suggested threshold, where the woody debris presents a public or private nuisance or "promote[s] the spread of wildfire." We suggest further refinement to this paragraph to

ensure that utilities do not leave felled wood in the forest such that it either causes a nuisance or will fuel future wildfires.

Leaving Woody Debris On Site at Request of the Landowner

As PG&E has noted, some property owners may prefer for utilities to leave felled wood in place. In recognition of this fact, the Board has provided that woody debris may be left on site at the request of the landowner and shall not otherwise be subject to the treatment requirements that accompany the Notice of Exemption. To address complaints that utility crews and contractors cut wood to unmerchantable lengths (precluding landowners from putting felled wood to productive use), the proposal commendably prohibits utilities from materially impairing the ability of the landowner to sell, barter, exchange, or trade felled wood and requires timber to either be left in full tree lengths or bucked to commercial lengths. RCRC supports these provisions.

Management of Woody Debris and Slash Upon Completion of Emergency Work

Proposed 14 CCR Section 1114(h) provides a pathway for utilities to undertake certain actions to repair or prevent damage to electrical infrastructure in the event of an emergency (or restore service after an emergency) without having to first file a Notice of Exemption. RCRC supports efforts to provide utilities with flexibility to effectively respond to emergency situations. Importantly, this flexibility is combined with an obligation for the utility to submit a Notice of Exemption upon conclusion of the emergency AND comply with the requirements for the treatment of slash and woody debris resulting from those operations. This post-harvest treatment requirement is incredibly important lest those emergency actions themselves create problems that landowners are poorly equipped (or unable) to mitigate.

Landowner Notification in 14 CCR 1114(f)(24)(B)

The Proposed amendments seek to require a utility to “undertake a good faith effort” to notify landowners that it intends to fell trees of a commercial species on the landowner’s property, except where the removal must be expedited to avoid imminent harm to persons or property. It is unclear whether this “good faith notification” requirement is intended to inform the landowner: 1) That work will be done; or, 2) that the landowner has a right to commercialize any timber harvested under the exemption and how it can coordinate scheduling.

As drafted, we fear the paragraph appears to be inconsistent with the landowner notification obligations contained in Public Resources Code Section 4295.5. That section does not provide any exemption from notification as contemplated in the opening clause of proposed 14 CCR 1114(f)(24)(B). Furthermore, it is not clear what would constitute a “good faith effort” at notification. Given the structure of the rest of the paragraph, it appears that this section is not intended to notify the landowner that work will be done, but instead to notify the landowner of his/her right to commercialize any timber. To clarify this intent, resolve inconsistency with PRC 4295.5, and reduce ambiguity, we suggest the following changes to proposed 14 CCR 1114(f)(24)(B):

(B) Absent circumstances where tree removal must be expedited to avoid imminent harm to persons or property, a utility shall undertake a good faith effort as part of its landowner notification process to notify landowners, or timber owners if different from

the landowner, that the utility intends to fell trees of a commercial species on the landowner's property. The landowner notification shall advise of the landowner's or timber owner's right to commercialize timber harvested under the utility's notice of utility right-of-way exemption and provide information regarding the process for coordinating such efforts with the utility. The utility shall also undertake a good faith effort to coordinate scheduling of timber operations so as to allow those interested landowners, or timber owners if different from the landowner, to make concurrent arrangements to commercialize felled trees. If a utility is required to skid felled trees pursuant to paragraph (3) of subsection (f) or any other provision of the Rules, those trees shall be skidded to a location that allows for the landowner or timber owner to reasonably arrange for decking, hauling of the timber. Except as otherwise authorized by this paragraph (24), the utility shall either leave timber in full tree lengths or bucked to commercial lengths.

Preparation of Public Agency Right of Way Notice of Exemption

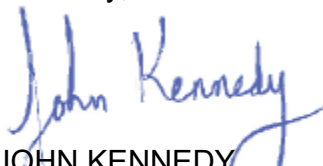
RCRC appreciates the Board's flexibility for public agencies to prepare and submit Public Agency ROW Exemptions without having to use a Registered Professional Forester (RPF). Public agency engineers and public works directors are adequately experienced to prepare and submit these exemptions. Requiring an RPF prepare and submit public agency notices of exemption would add considerable costs and delays to projects that are often undertaken by small, rural local agencies and would divert the finite universe of RPFs away from other critical forestry and wildfire mitigation projects.

Conclusion

In closing, RCRC is supportive of the Board's direction with respect to utility right of way exemption changes. Even with the safeguards built into the Amendments, there will likely still be some externalization of costs and responsibilities to the underlying landowners. As such, the landowner protections and treatment standards contemplated in the July 23, 2024 text should be viewed as minimum requirements that cannot be compromised at the risk of imposing unfair and unsustainable burdens on landowners who are already struggling to maintain defensible space, reduce fire risk, and afford property insurance. While changes to the Forest Practice Rules may be appropriate, the Board should avoid changes that create regrettable consequences by shifting risks, costs, and mitigation obligations to local governments and property owners. We appreciate the Board's work to refine the proposed Amendments over the last several months and look forward to continuing to work on this proposal over the coming months.

If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,



JOHN KENNEDY
Senior Policy Advocate