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## State Water Resources Control Board

October 14, 2022

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

Dear Board of Forestry and Fire Protection:

The State Water Resources Control Board (State Water Board) submits the following comments on behalf of the State Water Board and the nine Regional Water Boards in response to the Board of Forestry and Fire Protection request for comments on the 2022 Regulations and Priority Review. Thank you for the opportunity to provide public comment on your regulations for all timberlands subject to the Z'Berg-Nejedly Forest Practice Act (Public Resources Code (PRC) § 4511 et seq.), for the licensing of Professional Foresters and Certified Specialists under the Professional Foresters Law (PRC § 740 et seq.), and for the fire protection system in the State Responsibility Areas in California (PRC §§ 4290 & 4291).

Our comments present suggestions for modifying regulatory language to clarify language, improve resource protection, and reduce regulatory inefficiencies. Please see our comments below.

**Regulatory Review Issue #1:** Definition of “Meadows and Wet Areas” and “Wet Meadows and Other Wet Areas” (14 CCR 895.1)

**Problem:** As of January 1, 2023, there will still be two separate, but almost identical, definitions for meadows and wet areas:

**Meadows and Wet Areas:** Those areas which are moist on the surface throughout most of the year and/or support aquatic vegetation, grasses and forbs as their principal vegetative cover (14 CCR 895.1).

**Wet Meadows and Other Wet Areas** means those natural areas which are moist on the surface throughout most of the year and support aquatic vegetation, grasses and forbs as their principal vegetative cover (14 CCR 895.1).

Both of these definitions are problematic in several ways:

- 1) The definitions conflate two very different types of areas: meadows and wet areas. While there may be some overlap (some meadows may contain wet areas

- and some wet areas may be within or include portions of meadows), they are two distinct and very different ecological systems and are not equivalent;
- 2) The definitions lack temporal consistency. What may be “moist on the surface” during most of a year with historically average precipitation may not be moist on the surface during a year with significantly less precipitation. A timber harvesting plan developed during an abnormally dry year may not recognize, and therefore, would not provide protection for, an area that may become “moist on the surface” during the operational life of the plan. This lack of consistency creates a problem for enforcement and an atmosphere of regulatory uncertainty;
  - 3) The definitions recognize only those areas “which are moist on the surface throughout most of the year,” but not areas that may have continuous or recurrent saturation in the upper substrate;
  - 4) Having one definition for all other state programs and a separate definition unique to the Forest Practice Rules is by its nature inconsistent and counter to the goal of providing clarity. Additionally, separate definitions create regulatory uncertainty for the regulated public. Executive Order W-59-93, signed by Governor Pete Wilson on August 23, 1993 and still in effect today, declares that it is the policy of the State of California that *all* State programs and policies that affect the wetlands of California should be coordinated.

**Suggested Solution:** The State and Regional Water Boards suggest the definitions of “Meadows” and “Wet Areas” should be separated since these are two distinct ecological systems. In other words, there should be separate definitions for “Meadows” and “Wet Areas.”

The definition of “Meadows” should include similar components of the original definition, specifically that the meadows support grasses and forbs as their principal vegetative cover.

The definition of “Wet Areas” should be revised to: A) Address temporal consistency by including a phrase such as, “under hydrologic conditions that are consistent with the long term precipitation record,” B) Include continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both, C) Include duration of such saturation, and D) Allow the area’s vegetation to be dominated by hydrophytes or to lack vegetation.

**Regulatory Review Issue #2:** “Operational provisions” as used in Exemptions (14 CCR 1038) and Emergency Notices (14 CCR 1052(b) and 1052.5(b)), and “applicable provisions” as used in Conversion Exemptions (14 CCR 1104.1).

**Problem:** Forest Practice Rules Exemption and Emergency Notice sections state that “Timber Operations ... shall comply with all operational provisions of the FPA and District Forest Practice Rules applicable to 'Timber Harvest Plan', 'THP', 'and Plan'...” but neither “Operational provisions” as used in Exemptions and Emergency Notices, nor “applicable provisions” as used in Conversion Exemptions, is defined. These terms seem to have different meanings depending on who is asked. The lack of any definition

creates problems both for operators who must work without clear direction and for agency staff since the terms, lacking clear definitions, are difficult to enforce.

**Suggested Solution:** The State and Regional Water Boards suggest the Board of Forestry should either A) define which provisions are “operational” and “applicable” or B) direct the Department to create a list of “operational” and “applicable” provisions to be distributed to the regulated public and the agencies.

**Regulatory Review Issue #3:** “Approved Watercourse crossings” as used in Anadromous Salmonid Protection Rules Exemption notices (14 CCR 916.9(s)(4)) and Anadromous Salmonid Protection Rules Emergency notices (14 CCR 916.9(t)(4)).

**Problem:** Emergency Notices of Timber Operations (Emergency Notices) at times necessitate the construction or reconstruction of roads and watercourse crossings in order for the activity to occur. The language in these sections for the Forest Practice Rules requires the approval of watercourse crossings, if necessary, by another unidentified process outside of the Emergency Notice authorization. It is unclear how a watercourse crossing is “approved” and from where the “approval” comes under exemption and emergency notice ministerial permits. Board of Forestry and Fire Protection staff stated in the Final Statement of Reasons for the ‘Emergency Notice Fuel Treatment and RPF Responsibilities,’ March 2022, that the approval of watercourse crossing construction or reconstruction activities is delegated to the California Department of Fish and Wildlife (CDFW).” If that is the BOF’s intent, it should be stated explicitly rather than simply inferred.

This delegation to CDFW, however, does not recognize that road or watercourse crossing construction or reconstruction activities conducted under an Exemption or Emergency Notice project would also require approval from the Water Board. Watercourse crossing construction and reconstruction is likely to place earthen material within the watercourse and to create discharges of sediment to waters of the state, which requires regulatory authorization as part of a Water Board permit. To avoid potential confusion with applicants, this section should include not only explicit reference to CDFW approval, but also Water Board approval.

**Suggested Solution:** The State and Regional Water Boards suggest 14 CCR 916.9(s)(4) and 14 CCR 916.9(t)(4) state explicitly what constitutes an “approved Watercourse crossing” and from where the approval is derived. This approval statement should include required W.

The BOF should consider modifying the Forest Practice Rules to address the void in regulatory coverage for road and watercourse crossing construction or reconstruction activities that are not currently authorized under an Emergency Notice.

**Regulatory Review Issue #4:** Inconsistent use of the term “ford” and other related crossings where the watercourse is intended to flow across the running surface of a road.

Problem: Although the term “ford” was defined as part of the Road Rules 2013 package, the definition is somewhat ambiguous which has led to confusion in the field. The definition in 14 CCR 895.1 states:

Ford means a Logging Road Watercourse crossing where the road grade dips through the Watercourse channel.

This definition is ambiguous because it is not clear whether it means where the road grade dips through the *native* watercourse channel, or whether it may include flowing water across a constructed dip in the road grade, which is designed to act as the watercourse channel.

The “Designing Watercourse Crossings for Passage of 100-Year Flood Flows, Wood, and Sediment (Updated 2017)” (100-yr Crossing Manual) defines a ford as:

Ford crossing: A watercourse crossing where the road surface crosses at the natural grade of the channel. Thus, in ford crossings, no fill is placed within the channel to elevate the road grade and to make the crossing passible by vehicle traffic. If water is present at the time of use, the crossing is a “wet ford” and if water is not present at the time of use, the crossing is a “dry ford” (Figure B-1). In some cases a small amount of rock may be placed in the ford crossing to provide additional stability and a more suitable running surface for vehicle traffic or to ease the transition from the channel banks to the natural grade of the channel.

In addition to “ford crossings,” the 100-yr Crossing Manual defines three other crossings where the watercourse is designed to pass over the roadway, but where there is no equivalent definition in the Forest Practice Rules:

Rock-fill crossing: A watercourse crossing where rock that is free of fines is placed as fill in the channel to establish a usable road grade through the crossing to accommodate traffic (Figure B-2). Often a thin layer of sacrificial small-diameter rock is placed on top of the rock fill to provide a running surface that can accommodate truck traffic. Streamflow will typically pass through the rock fill during periods of low flow, but will pass over the rock fill during periods of high flow.

Rock-armored crossing: A watercourse crossing where fill, often composed of native earth material, is placed in the channel to establish a usable road grade through the crossing to accommodate traffic. The outfall of the crossing and road surface are protected against scour by revetment composed of rock (Figure B-3). Streamflow will typically pass over, rather than through, the crossing fill.

Vented crossing: A watercourse crossing structure designed to allow low water flow in the stream channel to pass through the structure (e.g., culverts) below a

hardened (usually rock or concrete) roadway (Figure B-4). During periods of high water or flooding, streamflow passes over the roadway.

The term “vented ford” is also used in the manual, but not explicitly defined.

Many THPs use the term “ford” to refer to any crossing where the watercourse is intended to flow across the roadway, whether in its native channel or a constructed dip. At least one industry road manual, which is commonly used by RPFs, uses the term “ford” to encompass both of the “Rock-fill crossing” and “Rock-armored crossing” in the 100-yr Crossing Manual. The Handbook for Forest, Ranch, and Rural Roads uses still another set of definitions.

The inconsistent terminology leads to confusion in the field, where the RPF writing the THP may envision one type of crossing, the agency inspector reviewing the plan may envision another type of crossing, and the operator implementing the plan may envision something entirely different from either the RPF or agency reviewer.

Suggested Solution: The State and Regional Water Boards suggest there should be one clear and unambiguous definition or set of definitions for crossings where the watercourse is intended to flow across the roadway. At a minimum, a guidance document would provide consistency and clarity to this definition.

Thank you again for the opportunity to provide comment.

Sincerely,



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Phil Crader, Assistant Deputy Director  
Division of Water Quality, State Water Resources  
Control Board

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October 14, 2022  
Date

cc:

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