



COAST ACTION GROUP  
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April 22,2022

Affiliate of Redwood Coast Watersheds Alliance

Board of Forestry and Fire Protection

Attn: Jane Van Susteren

Regulations Coordinator

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Comments Sent to <PublicComments@BOF.ca.gov>

Subject: Comments on proposed Rules Language Changes for “Meadows and Wet Areas, and Cutover Land Amendments” Board of Forestry and Fire Protection, Title 14 of the California Code of Regulations, Division 1.5, Chapter 4, Subchapters 1, 3, 4, 5, 6, and 7

Dear members of the Board of Forestry:

With this amendment, change, in the Rules language the Board seeks to apply wetland (wet area) language that is not consistent with other State Code and policy.

The justification for making such language change is for clarification and the elimination of confusion in the application of wetland protections. This justification is not logically consistent with State wetland policy, nor is it supported by any factual basis.

It has been pointed out to the Board (and Management Committee) that there are current existing definitions (derived by processes leading to adopted State Policy). Where these proposed Rule language changes are not consistent with the adopted State Policy. And where the authority of administration of the adopted State policy regarding wetlands is vested with, and administered by the State and Regional Water Boards in consort with the Department of Fish and Wildlife.

It has been pointed out by the responsible Resource Agency(s) to the Board and Management Committee members that:

- Current wet area (wetland) definitions in the Forest Practice Rule are not consistent with the current State Policy and definitions applied throughout the State.
- The currently proposed Rules language defining wet areas (wetlands) is insufficient and not consistent with current State approved policy, definitions, and delineation criteria.
- Having one definition for all other State programs and a separate definition for timber harvest areas creates more confusion and uncertainty.
- The application of substandard rule language is a threat to wetland resources. It has been clearly pointed out by the responsible Resources Agency(s) why, in what areas, the proposed language fails to meet the criteria to adequately define (delineate) wet areas.
- The authority to define standards for wetland delineation does not rest with the Board of Forestry. Such authority and responsibility is vested with the Regional and State Water Boards and the California Department of Fish and Wildlife.
- It is State policy that State programs regarding wetlands be coordinated (consistent).

Finally, the Board decision to adopt this proposed Rule consisting of language that would define and manage wetland resources and a Final Statement of Reasons (functional equivalent CEQA document) cannot be supported as consistent with State Policy or be a less damaging application of Rules. Thus, this language cannot be adopted consistent with State Code. The Board of Forestry must develop language as wet area (wetland) definition that is coordinated with the responsible Resource Agency(s) and is consistent with State code.

Alan Levine,  
For Coast Action Group

Background included – below.

## **BACKGROUND**

**WETLANDS – State Authority and Responsibility (Vested In Regional Boards and CDFW)**

Federal administrative law (e.g., 40 CFR Part 122.2, revised December 22, 1993) defines wetlands as waters of the United States. National waters include waters of the State of California, defined by the Porter-Cologne Act as “any water, surface or underground, including saline waters, within the boundaries of the State” (California Water Code §13050[e]). Wetland water quality control is therefore clearly within the jurisdiction of the State Water Board and Regional Water Boards.

Wetlands are further defined in 40 CFR 122.2 as “those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”

The Water Board recognizes that wetlands frequently include areas commonly referred to as saltwater marshes, freshwater marshes, open or closed brackish water marshes, mudflats, sandflats, unvegetated seasonally ponded areas, vegetated shallows, sloughs, wet meadows, playa lakes, natural ponds, vernal pools, diked baylands, seasonal wetlands, floodplains, and riparian woodlands.

Identifying wetlands may be complicated by such factors as the seasonality of rainfall in the Region. Therefore, in identifying wetlands considered waters of the United States, the Water Board will consider such indicators as hydrology, hydrophytic plants, and/or hydric soils for the purpose of mapping and

inventorying wetlands. The Water Boards will, in general, rely on the federal manual for wetland delineation in the Region when issuing Clean Water Act Section 401 water quality certifications (U.S. Army Corps of Engineers (Corps) Wetlands Delineation Manual, 1987). In there are cases where the U.S. EPA and Corps guidelines disagree on the boundaries for federal jurisdictional wetlands, the Water Board will rely on the wetlands delineation made by the U.S. EPA or the California Department of Fish and Wildlife . For the purpose of mapping and inventorying wetlands, the Water Board will rely on the protocols and naming conventions of the National Wetlands Inventory (NWI) prepared by the U.S. Fish and Wildlife Service (USFWS).

Many individual wetlands provide multiple benefits depending on the wetland type and location. There are many potential beneficial uses of wetlands, including Wildlife Habitat.

Preservation of Rare and Endangered Species (RARE); Shellfish Harvesting (SHELL); Water Contact Recreation (REC1); Noncontact Water Recreation (REC2); Commercial, and Sport Fishing (COMM); Marine Habitat (MAR); Fish Migration (MIGR); Fish Spawning (SPAWN); and Estuarine Habitat (EST). Some of these general beneficial uses can be further described in terms of the component wetland function. For example, many wetlands that provide groundwater recharge (GWR) also provide flood control, pollution control, erosion control, and stream baseflow);

## **WETLAND PROTECTION AND MANAGEMENT**

Wetlands and related habitats comprise some of the Region's most valuable natural resources. Wetlands provide critical habitats for hundreds of species of fish, birds, and other wildlife; offer open space; and provide many recreational opportunities. Wetlands also serve to enhance water quality, through such natural functions as flood control and erosion control, stream bank stabilization, and filtration and purification of surface water.

The Water Boards will refer to the following for guidance when permitting or otherwise acting on wetland issues:

- Governor's Executive Order W-59-93 (signed August 23, 1993; also known as the California Wetlands Conservation Policy, or the "No Net Loss" policy);
- Senate Concurrent Resolution No. 28

The goals of the California Wetlands Conservation Policy include ensuring "no overall net loss," achieving a "long-term net gain in the quantity, quality, and permanence of wetlands acreage and values ...", and reducing "procedural complexity in the administration of state and federal wetlands conservation programs."

Senate Concurrent Resolution No. 28 states, "It is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for the benefit of the people of the state."

Water Code Section 13142.5 states, "Highest priority shall be given to improving or eliminating discharges that adversely affect ... wetlands, estuaries, and other biologically sensitive sites."