

September 9, 2002

California State Board of Forestry and Fire Protection
Mr. Stan Dixon, Chairman
P. O. Box 944246
Sacramento, CA 94244-2460

RE: Rulemaking Comment on “Road Rules” (2002)

Rule language-July 15, 2002

Notice-July 17, 2002

ISOR-July 26, 2002

Dear Chairman Dixon and Members of the Board:

This letter will serve as public comment on behalf of CLFA regarding the above-noted proposed regulations. There is overwhelming consensus within our organization that our great fishery resources must not be damaged by forest management activities. Our members, whether they work for the regulatory agencies or the operational segment of the industry, diligently work to implement the existing rules with the goal of protecting all beneficial uses of water, including anadromous fisheries.

The proposed rules, however, do not constitute a well prepared attempt to accomplish that goal. Moreover, there is insufficient documented necessity for each specific new regulation. Nearly all of our objections are based on a failure of the Board to comply with the basic tenets of the Administrative Procedures Act (APA.) In some cases there is lack of clarity or necessity, and in other instances, a duplication of existing Forest Practice Rules (FPR's) or other State regulation. Specific issues follow in the order of publication in the noticed Rule Language. Regulatory citations refer to 14-CCR and those sections also refer to related sections applicable to the appropriate Forest District, unless otherwise noted.

§895.1 Definitions

“Channel Zone”

1. The definition lacks clarity because there is no commonly understood definition for “floodplain”. The term flood is inextricably tied to a flood return interval. There are 25-year return interval floods and there are 100-year return interval floods. Each is based on the existence of historic measurements of flow, or discharge.

2. A better alternative would be “bankfull” stage, because it is based on specifically observable physical characteristics in the field. This alternative was apparently not considered. Facts supporting this are found in the sections on “bankfull stage”, noted in the following textbooks by recognized experts in the field of hydrology:

- (1) Fluvial Processes in Geomorphology; Leopold, Wolman, Miller; 1992; Dover Publications Inc.
- (2) A View of the River; L. Leopold; 1994; Harvard University Press.
- (3) Applied River Morphology; D. Rosgen; 1996; Wildland Hydrology Inc.

“Convergent Slopes” has several shortfalls.

1. It fails the clarity standard because there is no corresponding definition or common understanding for “headwall swales”,(used parenthetically in line 6, page 1.) In addition, the use of the term “watercourse channels” (line 5, page 1) is confusing and duplicative, because there already exists (in §895.1) a definition for “watercourse”, as well as the currently proposed definition for “channel zone”. The mixing of these terms makes the definition hard to understand.
2. Another problem is that the last sentence (line 6-7, p. 1) states an interesting fact that has nothing to do with the definition. It is unnecessary and should be deleted.
3. This definition also fails the necessity standard because this term “convergent slopes” is found *nowhere else* in the FPR’s, nor in the Public Resources Code. Neither is it used in the proposed rule language, outside of its own definition. Why is it needed if it is not used anywhere else in regulation or statute?

“Saturated soil conditions”, and the optional “Unstable operating conditions”, presents several problems.

1. The option to abandon the use of “saturated soil conditions” in favor of “unstable operating conditions” does not provide for revision to the seven other places in the FPR’s where the original term is used, in other words, the change would lack referential integrity. Adopting the latter option would leave seven regulatory sections with an undefined term.

2. The option to abandon the use of “saturated soil conditions” in favor of “unstable operating conditions” would create potential confusion among those directly affected by the FPR’s because there already exists similar terms, such as “Unstable Areas” and “Unstable Soils”. These latter two terms are based on physical properties of the soils and not upon how much it rained. How does this option meet the consistency, clarity and non-duplication requirement of the APA?

3. The reference to “drainage facilities” on line 12½ is unclear as to why the alternative “drainage structures” was not used in addition, or in place of. Does the regulation specifically intend to *allow* visible turbidity in culverts? In addition, how will the enforcing agent be able to discern the source of the turbidity? Often it is produced by a multitude of causes and not attributable solely to one stressor.

4. This definition adopts vague language that prohibits “turbidity increase” (page 1, line 12½), yet does not define how that can be measured. To show that other State regulations *do require a standard unit of measurement*, as well as clear definition of the increase, check the WQCB Basin Plan which defines specifically how turbidity is measured¹. Where does this new regulation refer to the “applicable water quality requirements” or “visible” turbidity? The existing FPR’s, under §898.2(h) can not approve a plan, if its implementation would violate the standards of the Water Quality Control Plan. The visible turbidity definition of this definition is vague, inconsistent and fails the clarity test. The alternative to use existing definitions such as “Beneficial Use” and “Quality of Water” was never considered. It would be best to delete the phrase “is visible or” from line 13, page 1, and thereby provide a single clear standard for compliance.

5. Grammar and punctuation: There is a punctuation error on line 13, page 1; a parentheses should follow the number “1” where they are describing two different possible instances of visible turbidity increase. It would be clearer if these were formatted with hanging indents, similar to bullet points, to set off these differing instances. Grammatically, line 13 on page 1 has clarity problem: the word “visible” is unnecessary and redundant.

6. The final two paragraphs are wordy and confusing, making a clear enforceable standard hard to achieve. Line 15 through 25½, on page 1, should be deleted.

7. This entire definition could be corrected by rewording, as follows:
“Saturated soil conditions” means that site conditions are sufficiently wet, that

¹ “Central Valley Basin Plan; Water Quality Objectives, Sept. 1, 1998.

(a) tractor operations displace soils, or
(b) loading operations displace landing surface materials, or
(c) hauling displaces road surface materials,
to the extent a measurable turbidity increase is created in an associated watercourse,
that would exceed the applicable Regional Water Quality Control Board standards.

8. The noticed definition unsuccessfully duplicates regulations by the State and Regional WQCB's. It also lacks the authority to make regulations on behalf of those agencies. State law gives the authority over water to the State and Regional Water Quality Control Boards², and not to the BOF. Moreover, the codified Basin Plan for the Sacramento and San Joaquin Rivers sets a specific turbidity standard, using a commonly recognized unit of measurement³ (NTU's).

"Watercourse of Lake Transition Line" has several issues that run afoul with the APA, as well as generally accepted scientific facts.

1. With respect to "unconfined channels", the exact nature of "valley to width ratio of 4 or greater" is unclear and poorly explained. From what points is the valley measured, what does width refer to and from what points is "width" measured. Compliance or enforcement are nebulous. The valley could be measured between

² Water Code 13001. It is the intent of the Legislature that the state board and each regional board shall be the principal state agencies with primary responsibility for the coordination and control of water quality. The state board and regional boards in exercising any power granted in this division shall conform to and implement the policies of this chapter and shall, at all times, coordinate their respective activities so as to achieve a unified and effective water quality control program in this state.

Water Code 381. The authority of local or regional public agencies pursuant to this chapter shall control over any other provision of law which contains more stringent limitations on the authority of a particular public agency to serve water for use outside the agency, to the extent those other laws are inconsistent with the authority granted herein.

³ CCR; TITLE 23. Waters; Division 4. Regional Water Quality Control Boards; Chapter 1. Water Quality Control Plans, Policies, and Guidelines; Article 5. Central Valley Region; §3940. Revised Water Quality Control Plan for the Sacramento River and San Joaquin River Basins. (d) Inland Surface Waters: (1) Revise chemical constituents objective, clarify that metal objectives are dissolved concentrations, and delete disapproved selenium objectives for San Joaquin River, Salt Slough, and Mud Slough; (2) Provide for "appropriate averaging periods" to determine compliance with pH objective, temperature objective, turbidity objective; (3) Revise radioactivity objective; (4) Revise Toxicity objective to clarify how Regional Board makes determinations when combinations of toxic chemicals are present; (5) Add turbidity objective for surface waters with natural turbidity less than 5 NTUs.

the toes of the first slopes, or between the Holocene floodplain, or who knows what else. Likewise “width” could mean the channel zone, watercourse, three-times-bankfull, 100-year floodplain, but nothing clear is specified.

2. Also, with respect to “unconfined channels” the reference to “riverine hardwood and conifer trees” is unclear due to poor punctuation: does it mean that there are riverine conifers (if so, what are they)? In addition, must the riverine hardwoods be 25 years in age, or is it just the conifers? This is ambiguous, confusing, and difficult to enforce, at best. Better to use something academically defensible and field discernable, such as bankfull or a multiple thereof.

3. With respect to “confined channels” there exists a demonstrably inaccurate rule assertion that, twice bankfull equates to a 25-year return interval, when it does not. For example, bankfull equals about a 1.5 - 2 year return interval. Twice bankfull equals approximately a 50-year flood return interval. And three times bankfull is equivalent to a 100-year return interval. This definition should be corrected to reflect either the twice-bankfull pattern or the 25-year return interval standard. This fact is substantiated by the previously noted experts in hydrology, outlined in their textbooks⁴:

4. For clarity and consistency, use the same bankfull standard for both channel types. Bankfull is the single most accurate field indicator of stream action.

“Watersheds with Threatened or Impaired Values” lacks clarity and needs to have the standard for “restored” more clearly specified. A good alternative, which was not considered by the Board, would be “...restored by publicly funded projects that are in effect at the time of plan conformance.” Otherwise there could be a broad interpretation on what “restored” means. Does it mean physically possible, fiscally probable or is there some feasibility standard? It could be interpreted in such a way as to make the landowner responsible to an unlimited extent, and thereby either bankrupt him in the process, or keep him out of the forest. This could have extremely adverse consequences to jobs, businesses and local economies.

⁴ (A) Fluvial Processes in Geomorphology, Leopold, Wolman, Miller, 1992, Dover Publications Inc, page 219 (Fig. 7.10)
(B) A View of the River, Leopold, 1994, Harvard University Press, page 139 (Fig. 8.4)
(C) Applied River Morphology, Rosgen, 1996, Wildland Hydrology Inc, page 5-20.

914.2 Tractor Operations.

1. Assertions in the Notice lack substantial evidence to affirm that loose soil on 65% slopes will move downhill in a manner to threaten the quality of water. Neither is any evidence presented that 60% will provide the degree of protection to avoid perceived threats of downslope soil mobilization. *No differentiation was made regarding distance from, and classification of, any given watercourse.* Based on such reasoning, one would conclude that soil will pour down 65% slopes, into creeks, without regard to the proximity of those watercourses. One might also conclude that this would not happen on slopes under 60%. This, too, is inaccurate. There already exists a more conservative 50% slope exclusion for tractors, when operations occur near watercourses. It is contained in this section, under subsection ⁵(iii). It would therefore appear this new subsection is duplicative. The legislature, when revising the APA in 1982, intended a minimum ⁶standard be applied when determining “necessity” and “non-duplication”. The Board needs to specifically state what facts, studies, and expert opinions, along with their sources, were used to form this conclusion of necessity.

2. There are misstatements in the ISOR. The ‘Public Problem’ paragraph on page 4/29 states “The Board Ad Hoc Watershed committee received testimony from state and federal agencies that this was [too] steep of a % of slope. The current standard is based on an average angle of repose for soil to stay in place under natural conditions. Agency testimony at the Ad Hoc Watershed Committee indicated that currently occurring erosion could be reduced if the % of slope on which heavy equipment was allowed was reduced. ” As one who attended those meetings, I can state this was *not* the position of Mr. Tom Spittler of the California Geological Survey (CGS.) In addition, the representation that soil will not stay in place under natural conditions only on a 65%+ slopes, is incredible. It is doubtful that any of these assertions would be substantiated in a deposition from any of the professional geologists with the CGS. Based on 1 & 2 above, there appears to be substantial doubt regarding the necessity and non-duplication for this proposed rule revision.

⁵ §914[934, 954].2(f)(iii) places a prohibition on tractor operations upon “slopes over 50% which lead without flattening to sufficiently dissipate water flow and trap sediment before it reaches a watercourse or lake”

⁶ “[The legislative] intent is that an agency must include in the record facts, studies or testimony that are specific, relevant, reasonable, credible and of solid value, that together with those inferences that can rationally be drawn from such facts, studies or testimony, would lead a reasonable mind to accept as sufficient support for the conclusion that the particular regulation is necessary. *Suspicion, surmises, speculation, feelings, or incredible evidence is not substantial.*”(Legislature of California, Assembly Daily Journal, 208th Sess. 13,663-34 (1982).)

3. Additional misstatements in the ISOR, exist in the Necessity paragraph. On pages 4 & 5, it is stated that “During the Ad Hoc Watershed Committee discussions for this regulatory proposal, state and federal agencies testified that inspections of timber operations have shown that the existing rule allows tractors to operate on excessively steep slopes and thus create soil erosion.” These committee meetings are informal discussions among many individuals, who work in the public and private sector. As such, the committee does not record anything that could be remotely considered to be testimony. Nothing said there can be verified or accurately attributed. Representations to the contrary are not credible. Citing “testimony” from these meetings as justification for a regulation, is complete hearsay and does not constitute substantial evidence. The correct manner to substantiate these assertions of erosion potential, is to accompany any such verbal submissions to a Board committee, with (at the very least) summaries attributable to the individuals that spoke on behalf of those agencies. Without such an effort, there is inadequate substantial evidence to sustain any judicial scrutiny into the basis of regulatory necessity for this section.

4. Also on page 5/29, there is no evidence offered to substantiate the Board’s assumption of ‘No Significant Adverse Economic Impact on Any Business’. The reduction from 65% to 60% slopes for tractor operations means an 8% reduction in the amount of operable slopes. With cable yarding costs averaging 25% to 100% over tractor yarding, the added cost incurred with this subsection is indeed significant, and should be estimated.

914.6 Waterbreaks. While we agree with this rule proposal, there are problematic issues in the drafting of this section.

1. Clarity. There is an excessive and confusing maze of conjunctions in the language, as presented on lines 24 & 25, page 4. It would be clearer if this section were subdivided into three bullet points, or sub-sections. This alternative is suggested by OAL⁷ but was apparently not considered by the Board. A clearer form for this subsection would be as follows:

(a) except as otherwise provided for in the rules, all tractor roads shall have drainage facilities installed prior to any of the following conditions :

⁷ “How to Participate in the Rulemaking Process”, OAL electronic publication [URL: www.oal.ca.gov], 7/31/01.

- (1) The start of any rain which causes overland flow, across or along the operationally disturbed surface within a WLPZ .
- (2) The start of any rain which causes overland flow, across or along the operationally disturbed surface within an EEZ or ELZ designated for protection of the beneficial uses of water.
- (3) Sundown of any day when the National Weather Service forecasts for the area in question, any of the following:
 - (i) a chance of rain 30-percent-or-greater, or
 - (ii) a flash flood warning, or
 - (iii) a flash flood watch.

2. Clarity problem: The definition of “30 percent chance”, “flash flood warning” or “flash flood watch” is a technical term specific to a National Weather Service forecast, and may not be commonly understood by those directly affected by these regulations. A definition should, at least, be included in 895.1. Since a forecast is published material cited in the regulation, it should also be clearly identified by reference as to its availability to the regulated public.

3. Duplication. Subsection (j) appears to duplicate (a) without explanation.

914.7 Tractor Operations, Winter Period. While we agree with *basis* for this rule proposal, there are problematic issues in the drafting of this section.

1. The scope of this regulation exceeds the intended purpose of the Article, which is Harvesting Practices and Erosion Control. It is unclear and inconsistent because a Winter Period Operating Plan needs definition in §895.1. Existing regulations are clear in their intent to protect beneficial uses of water by maintaining drainage structures and facilities, as noted in various subsections of §§914, 915, 916, 923. The substitution of “Timber Operations⁸”, for the former term “mechanical site preparation and harvesting”, is so all-encompassing as to preclude practically *any* activity, without a Winter Period Operating Plan. Subsection (b) conflicts as it focuses on a narrower scope of activities. Therefore, subsection (a) could be construed to prevent the presence of personnel for the purposes of checking roads and drainage structures, including the presence of a single worker in a low-ground-pressure ATV for the purposes of manually checking roads and culverts. This requirement of a Winter Period Operating Plan for practically any activity is a significant addition of

⁸ PRC §4527, timber operations defined. Expects only “preparatory work such as treemarking, surveying, or roadflagging.”

paperwork (e.g. business reporting) for a landowner. This additional reporting paperwork is not acknowledged by the Board in the Notice.

2. For all regulatory references, the term "Winter Period Operating Plan" should be changed to "Winter Period Operating Addendum" and be included in the 895.1 definitions. This will be consistent with other plan additions, such as the Archaeological Addendum and the Site Preparation Addendum.

3. Subsection (b) should be reworded for clarity and consistency, as follows:

(b) The ~~winter period operating plan~~ Winter Period Operating Addendum shall include the ~~specific mitigations measures~~ to be taken ~~in during winter~~ timber operations to minimize ~~damage~~ adverse impacts due to erosion, ~~soil movement into watercourses~~ sedimentation and detrimental soil compaction of growing space ~~by from~~ felling, yarding, ~~loading~~, mechanical site preparation, and erosion control activities. A ~~winter period operating plan~~ Winter Period Operating Addendum shall discuss ~~address~~ the following subjects while providing specific operational mitigations:

- (1) Operations constraints by Erosion Hazard Rating or Estimated Erosion Potential.
- (2) Mechanical site preparation methods not discussed in the Site Preparation Addendum.
- (3) Ground Yarding systems (use of constructed/reconstructed skid trails).
- (4) Operating Pperiod constraints.
- (5) Timing for installation of Erosion eControls facilities timing.
- (6) Consideration of form of precipitation form -rain or snow.
- (7) Soil Ground conditions (soil moisture and EHR/EEP condition, frozen).
- (8) Ground cover associated with the planned Silvicultural system= ground cover.
- (9) Constraints on Timber Operations within the WLPZ.
- (10) Equipment use limitations.
- (11) Known unstable areas.
- (12) Road and Landing construction and reconstruction.

4. For clarity and consistency, the undefined term "dry rainless periods" should be changed throughout this section (and any other applicable sections), to the *defined* term, "extended dry periods." Otherwise, define it in §895.1.

5. For clarity and consistency, remove the last phrase of the sentence (on line 25, page 7; line 1, page 8) that references "visible turbidity". The "saturated soils" definition, with the changes proposed in this letter, provides a more clear and enforceable standard.

914.8 Tractor Road Watercourse Crossings There are clarity and consistency problems that conflict with the APA.

1. The revised wording (line 18, page 8) of subsection (d) is unclear as to the definition of "permanent crossing standards". A definition of Permanent Watercourse Crossing is found in 895.1, but it is not used or referenced in this subsection. This should be corrected to make this subsection clear and enforceable.

2. Does this rule section apply if logs are skidded upon a seasonal road? In other words, it is unclear as to how this section would be enforced with respect to the "unrestricted passage of...vertebrate aquatic species". If a seasonal road could be considered a tractor road, then subsection (c) could require that existing "crossing facilities" (another undefined term) installed under past regulations, to be outlawed, thereby requiring a reconstruction to comply with this new regulation. If so interpreted, it would be an ex post facto law, and therefore prohibited.

916.7 Reduction of Soil Loss. Inconsistent and duplicative with existing regulations.

1. An inconsistency appears in the web (pdf) version on line 23, page 9. The effective periods are unclear and should be corrected.

2. Subsection (b)(2) on line 1, page 10, refers to treatment of the "traveled surface of logging roads". This regulation belongs in Article 12 under Logging Roads and Landings, (section 923 et seq). It is confusing and unclear to place it under Article 6, Watercourse and Lake Protection.

3. The initial paragraph for this section on, line 1½ & 2½, page 9, specifies a soil treatment threshold of 800 square feet, while subsection (b)(3) on line 2½, page 10, specifies 100 square feet. This is inconsistent. Both standards apply to areas to be stabilized within a watercourse and lake protection zone (WLPZ). This is duplicative. Wording is awkward and should have been consolidated to make these subsections clear and enforceable.

916.14 Effectiveness and Implementation Monitoring. This section is missing from the Notice of Proposed Rulemaking, or perhaps mis-identified as 916.13. Regardless, it needs to be re-noticed.

1. The sentence on line 23, page 10, beginning with "This evidence includes..." has somewhere between four and six clauses that are spliced with commas and conjunctions joining unclear clauses. The wording is unclear and should be delimited by separate subsection designations, bullet-points, or something clear to those directly affected by this regulation. OAL also recommends this format.
2. The cost analysis in the ISOR is inadequate. It does not cite sources for the various cost assumptions. This makes it impossible for the public to see how the economic effects will affect them. When there are extensive costs cited that could reach \$100,000 for a single timberland owner, then there is an obligation by the State to make a clear, well documented assessment. The Board subsequently tries to dismiss their responsibility to produce a meaningful and accurate estimate of this cost, by alleging "that estimations of the potential cost for this regulation would be difficult to present in a format that would provide for meaningful public disclosure." Regardless, of the foregoing inadequacies, it was estimated that the cost for monitoring *just 1/4 to 1 mile of WLPZ* could be as high as \$25,000. It is not unusual for a THP to include several miles of Class I WLPZ. This author is presently working on a THP with 6 miles of Class I. That could amount to from \$150,000 to \$600,000 in monitoring for just one THP. In this year's meeting of the Board's Monitoring Study Group, held at Howard State Forest, featured a thorough exposition by experts such as Dr. Robert Beschta and others. It showed monitoring was very limited in its ability to draw scientifically valid conclusions without having ten or more years of carefully collected data. And even the efficacy of those conclusion depended on natural background variations in the measurements. These facts are evidently missing from the Board's analysis, or else they would not have required such a vaguely worded monitoring prescription.
3. An example of sweeping speculation occurs where it is stated on page 13 (ISOR) that "[i]nformation from the Department of Fish and Game indicates an economic output from sport fishing in the State of approximately \$7.1 billion in 1996. The sport fishing industry alone generated 74,000 jobs that year. Other studies show that the public spends hundreds of millions of dollars each year on sport fishing." Some of these benefits are undoubtedly derived from fisheries *completely unrelated* to water quality originating from timberlands, yet are not identified. Albacore fishing, party boats out of San Diego and near-shore bottom fishing would be some examples. Also not identified are revenues derived from sport fishing in areas where no timber

operations occur, such as Parks, Wilderness Areas and reserves with non-anadromous saltwater species. Therefore, such revenues cannot be assumed to offset the potential economic devastation this one rule poses to forest landowners. Even if one tried to make the case of offsetting revenues, those benefits will not accrue to the same small businesses.

4. In 1993, the U. S. Supreme Court (*Daubert v. Merrell Dow Pharmaceuticals Inc.*, 125 L. Ed. 2d 469) set a evidentiary standard for reliability when agencies use research, studies and expert testimony. Rule 702 of the Federal Rules of Evidence became the standard and requires federal trial judges, before they allow expert scientific or technical testimony, to examine several reliability criteria, including whether the offered theory has been subjected to adequate testing and peer review, as well as whether it has been accepted by the relevant scientific community. Since this regulation potentially involves federal issues of procedure, and the Board is acting in quasi-judicial capacity, then the Board is obligated to use this rule as one of its evidentiary standard. It cannot be positively verified that any of the Board's cited references meet that standard.

5. In view of the foregoing facts, it is apparent this regulation will have a very significant adverse impact upon a specific segment of the State's small business population. The ISOR provides speculative evidence supporting a finding of no significant adverse economic impact. Quite to the contrary, the State has lost one-quarter of wood manufacturing capacity in the past decade, due to increased State and Federal restrictions based upon forest management. Due diligence in the financial analysis would dictate that the State Forest Products Commission should have been consulted to provide some information.

923. Logging Roads and Landings.

1. References to water drafting more appropriately belongs in Article 6, section 916 et seq "Watercourse and Lake Protection".

2. Nonstandard practices (alternatives, in-lieu's, exceptions, etc) are already covered in many portions of the rules under Articles 3, 4, 6, 9, 11, 12, as is the requirement to protect the beneficial uses of water. The clause requiring compliance with "...the intent...as well as the other requirements set forth in the rules." says that, in effect 'the rules must be followed'. This added language is unnecessary and duplicative.

3. 923(g) refers to an undefined term, "road plan."

923.1 Planning for Roads and Landings.

1. Subsection (k) should be appended into subsection (e), for clarity. Why was this alternative rejected?
2. Subsection (l) is over-reaching as it encompasses all “timber operations”, not just activities pertaining to Roads. This section clearly belong under Article 6, section 916 et seq, if this was the Board’s intent. To clarify this section, the phrase “activities pertaining to roads or landings” should be substituted for “timber operations”.
3. Subsections of (l), specifically (1) and (2) are duplicative insofar as the plan submitter is already required under 916 to provide equal consideration for the beneficial uses, and ensure the adoption of feasible measures to accomplish this.

923.2 Road Construction. Duplication and Necessity not substantiated, it has numerous clarity issues. This regulation should have explored clearer alternatives.

1. Proposed subsection (w) appears to duplicate 923.1(g)(1), and is therefore unnecessary.
2. Proposed subsection (x)(1) appears to duplicate 923.1(b)(c)(g), and is therefore unnecessary.
3. Proposed subsection (x)(2) appears to duplicate 923.1(d), and is therefore unnecessary.
4. Proposed subsection (x)(3) appears to duplicate 923.1(g)(2), and is therefore unnecessary.
5. Proposed subsection (x) in general also appears to duplicate provisions in 923.2(b)-(g), and is therefore unnecessary.
6. Proposed subsection (y) appears to duplicate 923.1(h) & (i), 923.3 and 923.4(f), and is therefore unnecessary.
7. Proposed subsection (z) appears to duplicate provisions in 923.2(v) & 916.3(c), and is therefore unnecessary. 923.2(v) is in fact the more stringent standard insofar as it

covers a larger area than just the “channel zone”, while 916.3 limits the construction, reconstruction of roads to four specific instances, similar to the proposed regulation.

8. The issue of “use” of roads in the channel zone does not address the presence of past roads legally built under the regulations of the day. Could this be an ex post facto regulation? It is unclear. It appears one interpretation could exclude the use of legally constructed and maintained legacy roads, even if they have no associated adverse impacts. Finally, why is (z)(1) not part of 923.3? This alternative should have been considered.

923.3 Watercourse Crossings.

1. Reconstruction is defined for Roads in 895.1, but is not defined for Watercourse Crossings. It is therefore unclear what constitutes water crossing reconstruction, and needs to be a defined term under 895.1.

2. Subsection 923.3(e) is inconsistent with the 50-year specification in 923.4(f). It also conflicts with the definition of a Permanent Road (895.1), which specifies drainage structures which will accommodate the fifty-year flow. It also conflicts with the definition of a Permanent Watercourse Crossing (895.1), which specifies drainage structures which will accommodate the fifty-year flow. Fifty-year flow is defined in 895.1, while 100-year flood flow is not. This, too, is inconsistent.

923.5 Landing Construction. Lacks clarity, non-duplication and necessity.

1. Landing Reconstruction is not defined, while Road Reconstruction is. It therefore lacks clarity.

2. Section 916.3(c) limits the construction or use of landings in much the same way the proposed rule subsection does, and appears to be duplicative. In addition, work performed for the protection of public health and safety, is an existing part of Fish & Game Code 1600 et seq. It is therefore duplicative.

923.8 Planned Abandonment of Roads, Watercourse Crossings and Landings.

1. The proposed new subsection (f) appears to duplicate existing regulatory provisions. The term “to plan” is already defined in 895.1 to mean “examination of feasible alternatives, field review of alternatives, and reflection of this examination

and field review in choice of road or landing locations, and other factors, together with associated mitigation measures in the harvest plan." The term "abandonment" is defined in 895.1 to mean "leaving a logging road reasonably impassable to standard production four wheel-drive highway vehicles, and leaving a logging road and landings, in a condition which provides for long-term functioning of erosion controls with little or no continuing maintenance." Based on the those two existing definitions, it would appear that subsection (f) is a duplication of the provisions stated in the first paragraph of the existing section, 923.8.

1050 Erosion Control Maintenance. No objections because this revision is clearly worded as to intent.

This rule package, while seeking commendable goals, lacks the probity that the APA set as its standard for new State regulations. The proposed changes do not fit well with existing regulations and have numerous instances of unclear wording. There appears to be insufficient research regarding the necessity for many of these, and hence the frequent duplication of rules. Without significant rewording, this package could not pass judicial scrutiny, and it is doubtful it will pass muster with the Office of Administrative Law (OAL).

While those concerns, noted above are serious, our greatest concern is the hugely adverse impact to California's forestry professionals. The lack of adequate financial analysis in just one proposed regulation has been pointed out to possibly reach \$500,000 for one large THP. If this figure were multiplied by just one quarter of the THP's in an average year, it could exceed \$200 million dollars. This fact is not adequately explored in the various sections under the headings "Evidence Supporting Finding of No Significant Adverse Economic Impact on Any Business". The Board makes broad speculations and unattributable claims when claiming this rule package will have little adverse affect on our profession. The jobs of the people who work in the woods, sawmills, schools and associated support businesses will be gutted by the cumulative effect of this, and recent other rule packages. A qualified financial analyst should have been used, but to our knowledge, Board staff did not even use generally accepted accounting procedures by preparing a pro forma on the cost-benefit. There has been no evidence provided regarding the cumulative effect of needlessly prescriptive regulations. In fact, there is very little hard evidence that the public can verify, and this package falls far short of the evidentiary standard required by the APA.

With the foregoing in mind, the 760+ resource professionals of CLFA urge you to send this rule package back to committee, to correct the many problems identified. It is ironic this package was proposed in a year with record salmon returns, unseen during the past 30 years in the streams and rivers of California. We must be doing something right.

Very truly yours,

William E. Hultgren, RPF #2581
Forest Practices Committee Chair