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February 20, 2004

State Board of Forestry and Fire Protection  
Chairman Gary Rynearson, Ad Hoc Roads and Watershed Management Committee  
P.O. Box 944246  
Sacramento, CA 94244-2460

Dear Gary:

On December 4, 2003, the California Licensed Foresters Association (CLFA) wrote a letter to the Board of Forestry (BOF) regarding BOF priorities for the year 2004. Point #2 in that letter discussed the regulatory burden being placed on forest landowners and its impact on the ability of those landowners to keep their lands in timber production. In addition, point #2 discussed the need for the BOF to continue discussions regarding methods to streamline red tape while maintaining strong standards of environmental protection.

Subsequent to the December 4, 2003 letter, CLFA conducted an initial review of the Forest Practice Rules (FPRs) looking for opportunities to streamline the regulatory process while maintaining high levels of environmental protection. Since CLFA represents over half of the professionals implementing and enforcing the FPRs, we believe we are in a good position to conduct such a review. This initial review was also mentioned during meetings of the Ad Hoc Roads and Watershed Management Committee (Committee) in December and January. At that time, Committee members asked that we first bring the results of this review to the Ad Hoc Roads and Watershed Management Committee. Attached to this letter are some of the issues that came up during the review and CLFA asks that you address these issues during Committee meetings in the early months of 2004. Please note that the issues we present in this letter address only a portion of the regulatory burden being placed on forest landowners, especially in regards to the rule package entitled "Watershed Protection Extension 2003" (also known as the "T&I Rules"). CLFA will continue to review the FPRs, looking for ways to streamline processes while maintaining high levels of environmental protection.

Very truly yours,

Gary F. Howard, RPF #1017  
President, CLFA

Cc: Stan L. Dixon, Chair-Board of Forestry and Fire Protection

## Issue #1

Portions of 14 CCR 916[936, 956].5(e) require WLPZ identification and marking to be done prior to the preharvest inspection. This requirement is onerous due to the fact that the ribbon/marking can degrade over time to the point that the WLPZs need to be re-identified and/or remarked prior to commencement of timber operations. This re-identification and remarking represents an additional cost to landowners, which does not appear to be necessary in all cases. Identifying and marking the WLPZs on a sample basis (rather than the entire WLPZ) prior to the preharvest inspection will save landowners costs while still providing equivalent environmental protection and adequate information to the reviewing agencies.

### **Recommended text change (underline indicates addition, strikethrough indicates deletion) to 14 CCR 916[936, 956].5(e):**

(e) The letter designations shown in the "Protective Measures and Widths" column in Table I correspond to the following:

"A" WLPZ shall be clearly identified on the ground by the RPF who prepared the plan, or supervised designee, with paint, flagging, or other suitable means prior to the preharvest inspection. Sample identification of the WLPZ on the ground is satisfactory in those cases where the Director determines it is adequate for the plan evaluation. When sample identification is used, at least 10% of the WLPZ or a linear distance of 500 feet, whichever is less, must be identified on the ground prior to the preharvest inspection for evaluation. When sample identification has been used, the entire WLPZ shall be identified on the ground prior to the start of timber operations within or adjacent to the WLPZ.

"B" WLPZ shall be clearly identified on the ground by an RPF, or supervised designee, with paint, flagging, or other suitable means, prior to the start of timber operations within or adjacent to the WLPZ. *[In planning watersheds determined to contain coho salmon, chinook salmon, or steelhead, on the ground identification of the WLPZ must be completed prior to the preharvest inspection. Sample identification of the WLPZ on the ground is satisfactory in those cases where the Director determines it is adequate for the plan evaluation. When sample identification is used, at least 10% of the WLPZ or a linear distance of 500 feet, whichever is less, must be identified on the ground prior to the preharvest inspection for evaluation. When sample identification has been used, the entire WLPZ shall be identified on the ground prior to the start of timber operations within or adjacent to the WLPZ.]* *[NOTE: This coho section was approved by the Board but inadvertently omitted from approval by the OAL. The Board, CDF, OAL and Barclays are correcting this error.]*

"C" In site-specific cases, the RPF may provide in the plan, or the Director may require, that the WLPZ be clearly identified on the ground with flagging or by other suitable means prior to the start of timber operations within or adjacent to the WLPZ.

"D" To ensure retention of shade canopy filter strip properties of the WLPZ and the maintenance of a multi-storied stand for protection of values described in 14 CCR 916.4(b) [936.4(b), 956.4(b)], a base mark below the cut line of residual or harvest trees within the zone shall be done in advance of the preharvest inspection by ~~the an~~ RPF, or supervised designee. ~~[Except in planning watersheds determined to contain coho salmon, chinook salmon, or steelhead, s-~~ Sample marking is satisfactory in those cases where the Director determines it is adequate for the plan evaluation. When sample marking is used, at least 10% of the WLPZ or a linear distance of 500 feet, whichever is less, must be marked prior to the preharvest inspection for evaluation. When sample marking has been used, all marking shall be done in advance of falling operations within the WLPZ.] *[NOTE: This coho section was approved by the Board but inadvertently omitted from approval by the OAL. The Board, CDF, OAL and Barclays are correcting this error.]*

"E" To ensure retention of shade canopy filter strip properties and the maintenance of wildlife values described in 14 CCR 916.4(b) [936.4(b), 956.4(b)], a base mark shall be placed below the cut line of the residual or harvest trees within the zone and shall be done in advance of timber falling operations within the WLPZ by an RPF, or supervised designee. *[In planning watersheds determined to contain coho salmon, chinook salmon, or steelhead, tree marking must be completed prior to the preharvest inspection. Sample marking is satisfactory in those cases where the Director determines it is adequate for the plan evaluation. When sample marking ~~has been~~ is used, at least 10% of the WLPZ*

*or a linear distance of 500 feet, whichever is less, must be identified on the ground prior to the preharvest inspection for evaluation. When sample marking has been used, all marking shall be done in advance of falling operations within the WLPZ.] [NOTE: This coho section was approved by the Board but inadvertently omitted from approval by the OAL. The Board, CDF, OAL and Barclays are correcting this error.]*

## **Issue #2**

14 CCR 916[936, 956].9 (T&I regulations) makes no distinction amongst all the different types of Class I watercourses present within watersheds with threatened and impaired values. For example, watercourses with introduced fish populations at the upper reaches of the watersheds as well as domestic water supply watercourses receive the same level of protection as a watercourse with a listed salmonid present. This appears to be inconsistent with the intent of the T&I regulations and, perhaps, was unforeseen when the regulations were developed. In addition, the regulations were developed when the Klamath Mountains Province Evolutionary Significance Unit (ESU) for steelhead trout (*Oncorhynchus mykiss*) was candidate for listing under the Endangered Species Act. This ESU has subsequently been found to not warrant listing. The following recommended changes to 14 CCR 916[936, 956].9 are intended to limit those additional Class I protection measures within 14 CCR 916[936, 956].9 to only those Class I watercourses with listed or candidate anadromous fish populations. Please note that, under this proposal, Class I watercourses without listed or candidate anadromous fish populations still receive standard Class I protection measures as outlined in Table I of 14 CCR 916[936, 956].5.

### **Recommended text change (underline indicates addition, strikethrough indicates deletion) to 14 CCR 916[936, 956].9:**

In addition to all other district Forest Practice Rules, the following requirements shall apply in any planning watershed with threatened or impaired values:

(a) **GOAL** - Every timber operation shall be planned and conducted to prevent deleterious interference with the watershed conditions that primarily limit the values set forth in 14 CCR 916.2 [936.2, 956.2](a) (e.g., sediment load increase where sediment is a primary limiting factor; thermal load increase where water temperature is a primary limiting factor; loss of instream large woody debris or recruitment potential where lack of this value is a primary limiting factor; substantial increase in peak flows or large flood frequency where peak flows or large flood frequency are primary limiting factors). To achieve this goal, every timber operation shall be planned and conducted to meet the following objectives where they affect a primary limiting factor:

(1) Comply with the terms of a Total Maximum Daily Load (TMDL) that has been adopted to address factors that may be affected by timber operations if a TMDL has been adopted, or not result in any measurable sediment load increase to a watercourse system or lake.

(2) Not result in any measurable decrease in the stability of a watercourse channel or of a watercourse or lake bank.

(3) Not result in any measurable blockage of any aquatic migratory routes for anadromous salmonids or listed species.

(4) Not result in any measurable stream flow reductions during critical low water periods except as part of an approved water drafting plan pursuant to 14 CCR 916.9(r) [936.9(r), 956.9(r)].

(5) Consistent with the requirements of 14 CCR § 916.9(i), 14 CCR § 936.9(i), or 14 CCR § 956.9(i); protect, maintain, and restore trees (especially conifers), snags, or downed large woody debris that currently, or may in the foreseeable future, provide large woody debris recruitment needed for instream habitat structure and fluvial geomorphic functions.

(6) Consistent with the requirements of 14 CCR § 916.9(g), 14 CCR § 936.9(g), or 14 CCR § 956.9(g); protect, maintain, and restore the quality and quantity of vegetative canopy needed to:

(A) provide shade to the watercourse or lake, (B) minimize daily and seasonal temperature fluctuations, (C) maintain daily and seasonal water temperatures within the preferred range for anadromous salmonids or listed species where they are present or could be restored, and (D) provide hiding cover and a food base where needed.

(7) Result in no substantial increases in peak flows or large flood frequency.

(b) Pre-plan adverse cumulative watershed effects on the populations and habitat of anadromous salmonids shall be considered. The plan shall specifically acknowledge or refute that such effects exist. Where appropriate, the plan shall set forth measures to effectively reduce such effects.

(c) Any timber operation or silvicultural prescription within 150 feet of any Class I watercourse or lake transition line or 100 feet of any Class II watercourse or lake transition line shall have protection, maintenance, or restoration of the beneficial uses of water or the populations and habitat of anadromous salmonids or listed aquatic or riparian-associated species as significant objectives.

Additionally, for evenaged regeneration methods and rehabilitation with the same effects as a clearcut that are adjacent to a WLPZ, a special operating zone shall retain understory and mid-canopy conifers and hardwoods. These trees shall be protected during falling, yarding and site preparation to the extent feasible. If trees that are retained within this zone are knocked down during operations, that portion of the trees that is greater than 6" in diameter shall remain within the zone as Large Woody Debris. The zone shall be 25 feet above Class I WLPZs with slopes 0-30% and 50 feet above Class I WLPZs with slopes > 30%. NOTE: the protection measures outlined in subsection (c) only apply to those Class I watercourses where populations of anadromous salmonids that are listed as threatened, endangered, or candidate under the State or Federal Endangered Species Acts with their implementing regulations, are currently present or can be restored.

(d) (1) The plan shall fully describe: (A) the type and location of each measure needed to fully offset sediment loading, thermal loading, and potential significant adverse watershed effects from the proposed timber operations, and (B) the person(s) responsible for the implementation of each measure, if other than the timber operator.

(2) In proposing, reviewing, and approving such measures, preference shall be given to the following: (A) measures that are both onsite (i.e., on or near the plan area) and in-kind (i.e., erosion control measures where sediment is the problem), and (B) sites that are located to maximize the benefits to the impacted portion of a watercourse or lake. Out-of-kind measures (i.e., improving shade where sediment is the problem) shall not be approved as meeting the requirements of this subsection.

(e) Channel zone requirements

(1) There shall be no timber operations within the channel zone with the following exceptions:

(A) timber harvesting that is directed to improve salmonid habitat through the limited use of the selection or commercial thinning silvicultural methods with review and comment by DFG.

(B) timber harvesting necessary for the construction or reconstruction of approved watercourse crossings.

(C) timber harvesting necessary for the protection of public health and safety.

(D) to allow for full suspension cable yarding when necessary to transport logs through the channel zone.

(E) Class III watercourses where exclusion of timber operations is not needed for protection of listed salmonids.

(2) In all instances where trees are proposed to be felled within the channel zone, a base mark shall be placed below the cut line of the harvest trees within the zone. Such marking shall be completed by the RPF that prepared the plan prior to the preharvest inspection.

(f) The minimum WLPZ width for Class I waters shall be 150 feet from the watercourse or lake transition line. Where a proposed THP is located within the Sacramento or San Joaquin river drainages, and the Director, DFG, and the National Marine Fisheries Service concur; the RPF may explain and justify other WLPZ widths on areas where even aged regeneration methods, seed tree removal, shelterwood removal, alternative prescriptions, or rehabilitation will not be utilized adjacent to watercourse and lake protection zones and where slopes are less than 30%. NOTE: the WLPZ widths outlined in subsection (f) only apply to those Class I watercourses where populations of anadromous salmonids that are listed as threatened, endangered, or candidate under the State or Federal Endangered Species Acts with their implementing regulations, are currently present or can be restored.

**(g)** Within a WLPZ for Class I waters, at least 85 percent overstory canopy shall be retained within 75 feet of the watercourse or lake transition line, and at least 65 percent overstory canopy within the remainder of the WLPZ. The overstory canopy must be composed of at least 25% overstory conifer canopy post-harvest. Where a proposed THP is located within the Sacramento or San Joaquin river drainages, and the Director, DFG, and the National Marine Fisheries Service concur; the RPF may explain and justify other canopy retention standards on areas where even aged regeneration methods, seed tree removal, shelterwood removal, alternative prescriptions, or rehabilitation will not be utilized adjacent to watercourse and lake protection zones and where slopes are less than 30%.

Harvesting of hardwoods shall only occur for the purpose of enabling conifer regeneration. NOTE: the protection measures outlined in subsection (g) only apply to those Class I watercourses where populations of anadromous salmonids that are listed as threatened, endangered, or candidate under the State or Federal Endangered Species Acts with their implementing regulations, are currently present or can be restored.

**(h)** For Class I waters, any plan involving timber operations within the WLPZ shall contain the following information:

**(1)** A clear and enforceable specification of how any disturbance or log or tree cutting and removal within the Class I WLPZ shall be carried out to conform with 14 CCR 916.2 [936.2, 956.2](a) and 916.9 [936.9, 956.9](a).

**(2)** A description of all existing permanent crossings of Class I waters by logging roads and clear specification regarding how these crossings are to be modified, used, and treated to minimize risks, giving special attention to allowing fish to pass both upstream and downstream during all life stages.

**(3)** Clear and enforceable specifications for construction and operation of any new crossing of Class I waters to prevent direct harm, habitat degradation, water velocity increase, hindrance of fish passage, or other potential impairment of beneficial uses of water.

NOTE: the protection measures outlined in subsection (h) only apply to those Class I watercourses where populations of anadromous salmonids that are listed as threatened, endangered, or candidate under the State or Federal Endangered Species Acts with their implementing regulations, are currently present or can be restored.

**(i)** Recruitment of large woody debris for aquatic habitat in Class I anadromous fish-bearing or restorable waters shall be ensured by retaining the ten largest dbh conifers (live or dead) per 330 feet of stream channel length that are the most conducive to recruitment to provide for the beneficial functions of riparian zones. The retained conifers shall be selected from within the THP area that lies within 50 feet of the watercourse transition line. Where the THP boundary is an ownership boundary, a class I watercourse, and the WLPZ on both sides of the watercourse currently meets the stocking standards listed under 14 CCR 912.7[932.7,952.7](b)(2)); the five (5) largest dbh conifers (live or dead) per 330 feet of stream channel length that are the most conducive to recruitment to provide for the beneficial functions of riparian zones within the THP area shall be retained within 50 feet of the watercourse transition line.

The RPF may propose alternatives to substitute smaller diameter trees, trees that are more than 50 feet from the watercourse transition line, or other alternatives on a site specific basis. The RPF must explain and justify in the THP why the proposed alternative is more conducive to current and long-term Large Woody Debris recruitment, shading, bank stability, and the beneficial functions of riparian zones. NOTE: the protection measures outlined in subsection (i) only apply to those Class I watercourses where populations of anadromous salmonids that are listed as threatened, endangered, or candidate under the State or Federal Endangered Species Acts with their implementing regulations, are currently present or can be restored.

**(j)** Where an inner gorge extends beyond a Class I WLPZ and slopes are greater than 55%, a special management zone shall be established where the use of evenaged regeneration methods is prohibited. This zone shall extend upslope to the first major break-in-slope to less than 55% for a distance of 100 feet or more, or 300 feet as measured from the watercourse or lake transition line, which ever is less. Establishment of this zone shall only be required along those Class I watercourses where populations of anadromous salmonids that are listed as threatened, endangered, or candidate under the State or Federal Endangered Species Acts with their implementing regulations, are currently present or can be restored. All operations on slopes exceeding 65% within an inner gorge of a Class I or II watercourse shall be reviewed by a Registered Geologist prior to plan approval, regardless of

whether they are proposed within a WLPZ or outside of a WLPZ.

### **Issue #3**

14 CCR 916[936, 956].9(s) does not allow any tree removal within ELZs, WLPZs, etc. under emergency notices and exemption notices except under limited circumstances. This rule appears to unnecessarily limit the removal of dead, dying, and diseased trees near watercourses. There are now landscapes with wide buffers containing large numbers of such trees along watercourses. The outright prohibition of harvest has created an overabundance of dead, dying, and diseased trees along watercourses creating a situation where it appears the level of protection is too high and therefore costly to landowners.

#### **Recommended text change (underline indicates addition, strikethrough indicates deletion) to 14 CCR 916[936, 956].9(s):**

(s) No timber operations are allowed in a WLPZ, or within any ELZ or EEZ designated for watercourse or lake protection, under emergency notices or exemption notices except for hauling on existing roads, road maintenance, ~~and~~ operations conducted for public safety, construction or reconstruction of approved watercourse crossings, temporary crossings of dry Class III watercourses which do not require a "Streambed Alteration Agreement" under the Fish and Game Code ~~or~~ forest conditions requiring harvesting that is approved by a letter of concurrence from DFG and the National Marine Fisheries Service, or the harvest of dead, dying or diseased conifer trees where a minimum of two dead, dying, or diseased conifer trees per acre at least 16 inches diameter breast high and 50 feet tall shall be retained within 50 feet of the watercourse transition line. Trees to be harvested shall be marked by, or under the supervision of, an RPF prior to timber operations.

### **Issue #4**

With regards to the mapping of skid crossings of dry Class III watercourses, there appears to be a conflict between 14 CCR 1034(x)(7) and 14 CCR 916[936, 956].4(c)(1). The former rule section clearly does not require the mapping of temporary Class III watercourse crossings which are dry during operations. The second to last sentence of the latter rule section has been interpreted to require the mapping of such crossings unless the RPF proposes an alternative practice under 916[936, 956].6. The following proposed rule change is an attempt to eliminate the conflict between the mentioned rule sections.

#### **Recommended text change (underline indicates addition, strikethrough indicates deletion) to 14 CCR 916[936, 956].4(c):**

(c) The protection and WLPZ widths for Class III and Class IV waters shall prevent the degradation of the downstream beneficial use of water and shall be determined on a site-specific basis.

(1) Where operations occur adjacent to Class III watercourses, the RPF shall designate in the THP an equipment limitation zone (ELZ) of at least 25 feet where sideslope steepness is less than 30% and at least 50 feet where sideslope steepness is 30% or greater unless explained and justified otherwise in the THP and approved by the Director. Class III watercourses within logging areas where the EHR is Low and the slopes are less than 30% shall not require an ELZ unless proposed by the RPF or required by the Director. The RPF shall describe the limitations on the use of heavy equipment in the THP. Where appropriate to protect the beneficial uses of water the RPF shall describe additional protection measures which may include surface cover retention, vegetation protection and timber falling limitations. Consistent with 14 CCR 1034(x)(7), ~~the~~ location of the areas of heavy equipment use in any ELZ shall be clearly described in the plan, or flagged or marked on the ground before the preharvest inspection. When necessary to protect the beneficial use of water, the RPF shall designate and the Director may require a WLPZ for Class III and Class IV waters or an ELZ for Class IV waters.

(2) The width of the WLPZ for Class III and IV waters shall be determined from on-site inspection. Minimum protective measures required when Class III and Class IV protection zones are necessary are contained in Table I 14 CCR 916.5 [936.5, 956.5].

(3) Soil deposited during timber operations in a Class III watercourse other than at a temporary crossing shall be removed and debris deposited during timber operations shall be removed or stabilized before the conclusion of timber operations, or before October 15. Temporary crossings shall be removed before the winter period, or as approved by the Director.

(4) When approved by the Director on an individual plan basis as provided in Section 14 CCR 916.4(c)(1) [936.4(c)(1), 956.4(c)(1)] Class IV waters shall be exempted from required protection when such protection is inconsistent with the management objectives of the owner of the manmade watercourse.