

INITIAL STATEMENT OF REASONS

Watercourse Rules Streamlining, 2006

[Published May 26, 2006]

Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 916.5(e) [936.5(e), 956.5(e)] Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures [All Districts]

§ 916.9 [936.9, 956.9] Protection and Restoration in Watersheds with Threatened or Impaired Values [All Districts]

The proposed changes to the Forest Practice Rules are related to amending the “Procedure for Determining Watercourse and Lake Protection Zone (WLPZ) Widths and Protective Measures” and “Protection and Restoration in Watersheds with Threatened or Impaired Values (T/I)”. The amendments provide regulatory relief to landowners harvesting timber near streamcourses. Regulatory relief, or streamlining, is provided by 1) allowing sample marking of watercourse boundaries and harvest trees for Nonindustrial Timber Management Plans (NTMP); 2) waiving certain T/I rules for watercourse reaches where anadromous salmonids are not present and cannot be restored, as determined by State Agency participating in review of the harvest plan; 3) allowing harvesting of dead or dying trees in T/I watercourses under emergency notices filed under the Forest Practice Rules, with specific circumstances to protect large woody debris recruitment.

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

Reducing the regulatory burden to forest landowners, particularly small forest landowners, while retaining a high level of environmental protection is necessary for keeping large forested lands undeveloped and providing ecosystem services such as open space. The undeveloped forest setting provides numerous benefits to society and will have similar benefits for future generations.

With regulatory costs increasing, harvesting and planning costs are often greater than the potential financial returns from forest management activities, including those from the harvesting of timber on a sustainable basis. To help offset the unintended consequences of loss of forest land to other non-forestry settings, the

State Board of Forestry and Fire Protection (Board) continuously considers opportunities to reduce regulatory burden to landowners while retaining a high level of environmental protection.

The Board has previously analyzed the economic impact of all its regulations since 1999 (See Executive Order S-2-03). Of note in that review was the economic impact to landowners implementing watercourse protection regulations. The estimated economic impacts of Board rules were substantially dominated by the regulations related to watercourse protection. In an effort to continuously improve the watercourse regulations, while maintaining a high level of environmental protection, suggestions were made to the Board in 2004 to modify some watercourse regulations that were not practical or not likely to result in additional environment protection for watercourses. Several suggested changes included:

- **WLPZ marking and tree harvest identification prior to the preharvesting inspection [14 CCR § 916 .5(e)[936.5(e), 956.5(e)]:** This requirement is onerous and unnecessary as designating WLPZ boundaries prior to the preharvest inspection results in the ribbon or marking paint to degrade long before the actually harvest occurs, resulting the need to remark the WLPZ boundary prior to timber harvesting operations. This redesignation represents an additional cost to landowners which is not necessary.
- **Threatened and Impaired Watershed regulations apply to all Class I reaches of the designated watershed, regardless of the presence of listed salmonids [14 CCR § 916.9[936.9, 956.9]:** All portions of the T/I designated watershed receive the same level of protection regardless of the presence of salmonids intended to be protected under the goals of the T/I rules. For example, watercourses with introduced fish or reaches above barriers (e.g. dams, waterfalls) receive the same salmonids protection even though these reaches do not contain salmonids species intended to be protected by the T/I rules. Applying T/I rules to locations determined to not support species targeted for protection by the T/I rules adds unnecessary cost burden to landowners.
- **Prohibition on removal of limited amounts of dead and dying trees in T/I watercourses is overly restrictive [14 CCR § 916 .9(s)[936.9(s), 956.9(s)]:** Existing T/I rules do not allow any tree removal in watercourses under emergency notices and limited amounts under activities determined to be “exempt” from filing a Timber Harvest Plan under the Forest Practice Rules. This unnecessarily limits the removal of dead and dying trees near watercourse. The wide landscape buffer required under the T/I rules

can contain large numbers of dead trees, particularly in a situation where catastrophic tree mortality has occurred (e.g. fire or insect damage). The outright prohibiting of harvest can create an overabundance of dead and dying trees and results in a level of protection that is too high and therefore costly to landowners.

SPECIFIC PURPOSE OF THE REGULATION

The proposed changes to the Forest Practice Rules modify WLPZ and T/I regulations to reduce the economic impact to landowners while retaining a high level of environmental protection.

Subsection 916.5(e)[936.5(e), 956.5(e)] modifies the existing rule language to allow sample identification of WLPZ boundaries for NTMPs. This section also modifies the existing rule language to allow trees harvested in the WLPZ to be sample marked at the time of preharvest inspection under NTMPs and other plans outside of T/I watersheds, instead of marking all trees.

Subsection 916.9 (f)[936.9(f), 956.9(f)] modifies T/I regulations to specify that several standards for T/I Watersheds [(f)(1) minimum width for Class I streams; (f)(2) overstory canopy for Class I waters; (f)(3)(A-C) impacts and from harvesting in Class I waters and Class I road crossing limitations; (f)(4) large woody debris requirements; and (f) (5) inner gorge harvesting limitations apply to those watercourse reaches where anadromous salmonids are always or seasonally present and to those watercourse reaches where anadromous are limited, but can be feasibly restored as identified by a Department of Fish and Game (DFG) biologist or as further identified and refined during preparation and review of the plan.

Subsection 916.9 (g)[936.9(g), 956.9(g)] modifies the term used for the name of Geologists required for plan review.

Subsections 916.9 (h-u)[936.9(h-u), 956.9(h-u)] are non substantive changes for purposes of re-lettering the provision sections for clarity.

Subsection 916.9 (p)[936.9(p), 956.9(p)] eliminates the prohibition on harvesting in T/I WLPZs under emergency notices. Subsection (p)(6) clarifies that harvesting in T/I WLPZs under exemptions can be conducted when recommended in writing by the DFG.

Subsection 916.9 (q)(1-7)[936.9(q)(1-7), 956.9(q)(1-7)] states the conditions under which tree harvesting in a T/I WLPZ can occur under emergency notices.

Subsection 916.9 (r)[936.9(r), 956.9(r)] adds Program Timber Environmental Impact Reports as a type of plan that can be used to include salvage logging in a

T/I WLPZ. Subsection 916.9 (r)(1)[936.9(r)(1), 956.9(r)(1)] states that prohibitions to salvage logging do not apply to emergency operations under 14 CCR 1052.

Note: Existing section 916.9 (v)[936.9(v), 956.9(v)] states that section 916.9 [936.9, 956.9] expires on December 31, 2006. While this section is not proposed for amendments under this proposal, changes under this regulation are dependant on a related regulation, Watershed with Threatened or Impaired Values Extension 2006, to be adopted by the Board prior to expiration of section 916.9 [936.9, 956.9].

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered alternatives to the regulation proposed. The alternatives addressed adding other regulatory relief amendments and wording modifications for clarity. These alternatives were rejected as other regulatory changes (related to skid trail mapping requirements) were determined to be addressed as a separate regulatory action, avoiding unnecessary delay in implementation of the proposed regulations.

Various versions for communicating and documenting the proposed changes were rejected as the proposed language represents the most clear communication method.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects as a result of the proposed rules. The proposed rules do not dismiss the environmental protection standards necessary to meet the goals of restoring anadromous salmonids population in T/I watersheds pursuant to T/I goals.

The most substantial potential adverse environmental effects are related to amendments under 916.9 (f) and 916.9 (q). Under 916.9 (f) the waving of T/I rules for Class I waters that do not contain salmonids populations will not be implemented unless reviewed by agencies specialists determines that such a waiver is consistent with the T/I goals stated in 916.9 (a). Additionally, Class I watercourse protection rules under section 916.5 are retained regardless of salomid population status, providing a high level of protection to the beneficial use of water.

Subsection 916.9 (q) permits dead and dying timber under emergency operations under 14 CCR 1052 to be conducted. Circumstances that are necessary for a declaration of an emergency, such as fire or insect damage, would result in an

excessive amount of dead trees. The proposed rule would allow removal only of the trees in excess of the minimum number established for any T/I watercourse.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The Board staff estimated that this regulation should not have any adverse economic impact on any business. The amendment generally provides a wider range of in-field plan preparation options for NTMPs and a wider range of harvesting opportunities in T/I watersheds. Both factors should contribute in positive ways to the economic benefits of landowners harvesting timber.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has not identified any alternatives that would lessen any adverse impact on small businesses.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation as referenced in this *Statement of Reasons*:

1. CLFA letters submitted to Board dated December 4, 2003, February 20, 2004, and July 27, 2005.
2. Buckeye Report 2003
3. Governor's Executive Order S-2-03

Pursuant to Government Code § 11346.2(b)(6): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

PROPOSED TEXT

The proposed revisions or additions to the existing rule language are represented in the following manner:

UNDERLINE indicates an addition to the California Code of Regulations,
and

~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

All other text is existing rule language.

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