

INITIAL STATEMENT OF REASONS

Watersheds with Threatened or Impaired Values Extension, 2008

[April 11, 2008]

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

Amend:

§ 895.1	Definitions
§ 898	Feasibility Alternatives
§ 914.8 [934.8, 954.8]	Tractor Road Watercourse Crossing
§ 916 [936, 956]	Intent of Watercourse and Lake Protection
§ 916.2 [936.2, 956.2]	Protection of the beneficial Uses of Water and Riparian Functions
§ 916.9 [936.9, 956.9]	Protection and Restoration in Watersheds with Threatened or Impaired Values
§ 916.11 [936.11, 956.11]	Effectiveness and Implementation Monitoring
§ 916.12 [936.12, 956.12]	Section 303(d) Listed Watersheds
§ 923.3 [943.3, 963.3]	Watercourse Crossings
§ 923.9 [943.9, 963.9]	Roads and Landings in Watersheds with Threatened or Impaired Values

PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATIONS ARE INTENDED TO ADDRESS

Beginning in 1996, the State Fish and Game Commission and the National Marine Fisheries Service (NMFS) listed several species and Ecologically Significant Units of anadromous salmonids as threatened under the State Endangered Species Act (ESA) and the Federal ESA. Following these listings, a comprehensive review of the California Forest Practice Rules (FPRs), with regard to their adequacy for the protection of salmonid species, was prepared for the State Board of Forestry and Fire Protection (Board) (*Report of the Scientific Review Panel* [SRP report], 1999). Following an extensive review of the regulations, "The SRP concluded the FPRs, including their implementation (the 'THP process') do not ensure protection of anadromous salmonid populations" (*Report of the Scientific Review Panel*, 1999).

The Board addressed these issues in 2000, by recognizing the substantial concerns raised by other agencies additionally charged with the protection of the State's valuable watershed resources. The Board was also aware of the need to protect listed species that may be impacted by practices that are regulated under the Board's purview, regardless of their location within the State. Furthermore, the Board recognized the potential for economic impacts to timberland owners

and others that could result from certain types of restrictions or requirements. Considering those and other relevant factors, the Board adopted changes to the California Forest Practice Rules (FPRs) under a previous rulemaking package (Protection for Threatened and Impaired Watersheds (T/I), 2000, OAL File No. Z00-0118-14).

In general, the T/I rules are regulations under the FPRs that define planning and operational requirements for timber harvesting in watershed designated as having “threatened and impaired values.” As defined in the FPRs, T/I watersheds means planning watersheds with State or federally listed threatened, endangered or candidate populations of anadromous salmonids present or where they can be restored.

In order to provide the Board time to review alternatives to the 2000 adopted T/I regulations, the Board chose to establish a specific period of time that the rule changes would be effective. By imposing a limit on the effective period of the rule changes, the Board would be allowed to work with landowners, scientists and other parties to investigate whether an alternative regulatory approach could be developed.

The Board recognized that any alternative approach would not be fully implemented prior to December 31, 2000 and extended the rule for an additional year in previous rulemaking package (Protection for Threatened and Impaired Watersheds, 2001, OAL File No. Z00-1107-03S), and followed with additional extensions in 2003, 2006 and 2007, resulting in the current expiration date of December 31, 2008.

The most recent extension (Watersheds with Threatened or Impaired Values Extension, 2007 OAL File No. 2007-0917-02S) was adopted based on the premise that rule review being conducted by actions shown below would be completed prior the December 2008. However, while these efforts are occurring, they have not been completed and an extension until December 31, 2009, is necessary to complete evaluations of the current rule.

- 1) The Board, in cooperation with other agencies, is reviewing the entire suite of existing T/I rules. This rule review is expected to be completed by January 2009, and any rule amendments would be proposed during calendar year 2009. The board expects that any amendments to these rules would become effective January 2010.

- 2) To facilitate the T/I review, the Board has initiated a Technical Literature Review of the T/I rules to determine the necessity and effectiveness of the regulations. The outcome of the literature review could affect the terms and conditions of the T/I rules. The literature review is expected be completed September, 2008.

SPECIFIC PURPOSE AND NECESSITY OF THE REGULATIONS

The purpose of the regulation is to extend the existing T/I rules. The Board will consider as options for the extension one, two, or three years. Factors relevant to the amount of time include 1) the amount of time needed to complete and consider the results of an independent third party contracted literature review; and 2) input from the public. The time necessary to complete the literature review by a third party contractor is not known at this time.

Specific changes to the proposed regulations in this Notice, entirely and solely involve changing the expiration date of the regulations to December 31, 2009.

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

The Board has considered several alternatives to the proposed regulation.

Alternative #1: Repeal Existing T/I rules. This alternative would let the existing T/I rules expire without renewal or extension. This alternative was rejected as it would have been inconsistent with on-going salmonid protection strategies.

Alternative #2: Complete the Technical Literature Review prior to expiration of the existing T/I rules. This alternative would have allowed the Board to consider agency, stakeholder, and scientific technical literature during 2008 and consider repeal, adoption or amendments prior expiration of the existing rules. This alternative was rejected as there is not sufficient time to conduct an appropriate literature review, consider regulatory changes, and process regulatory changes prior to the expiration of the existing T/I rules. Existing statute PRC 4551.5 limits the Board to implementing permanent rules by January 1st of each year, necessitating regulatory processing by July 1 of each year. Completion of the literature review and regulatory processing could not reasonably be complete by July, 2009.

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 do not change the existing environmental protection standards in the FPRs deemed necessary to meet the goals of restoring anadromous salmonid population in T/I watersheds as stated in the T/I goals.

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

Alternative #1, above would have lessened any adverse impact on small business.

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

The changes proposed under this rulemaking action would extend the effective date of rules until December 31, 2009. There are no other proposed regulatory changes under this proposal. As such, there would be no additional economic relief or burden on any impacted business beyond what is imposed by the existing T/I rules.

While extending the T/I regulations would not impose new significant adverse economic impact on any business, the existing T/I rules currently in place were estimated in 2001 to have potential substantial adverse economic impact to affected businesses. The existing T/I rules added protections for impaired watersheds which required retention of trees which would previously been harvested and additional requirements for erosion control, watercourse crossings, restoration, monitoring, and selection of alternatives. These measures were expected to increase the cost of harvesting and reduce the numbers of trees removed near streams.

The existing T/I rules were also expected to affect small and large timberland owners by increasing the cost for timber harvesting. These extra costs are associated with planning and operations, and may include but are not limited to: additional planning, construction and maintenance costs for roads and watercourse crossings, additional cost of professional consultations, and costs associated with a reduction in long term sustained yield (LTSY).

Although the Board staff has identified the potential for increased costs associated with the changes to the Rules, the Board staff also identified the potential for increased benefits. Some of the benefits derived from the change in the rules in 2000 could contribute to the ability of timberland owners to continue to harvest timber without the restrictions that could result from a determination of "take" by the National Marine Fisheries Service. Benefits will also be derived from potentially enhanced beneficial uses of water for drinking and recreational uses.

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

The State Board of Forestry and Fire Protection consulted the following listed information and/or publications as referenced in this *Initial Statement of Reasons*. Unless otherwise noted in this *Initial Statement of Reasons*, the Board did not rely on any other technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

1. Board of Forestry and Fire Protection. 2000. Protection for Threatened and Impaired Watersheds, 2000, OAL File No. Z00-0118-14).Barclays Official California Code of Regulations.
2. California Department of Fish and Game. February 2004. Recover Strategy of California Coho Salmon.
3. Watersheds with Threatened or Impaired Values Extension, 2007 OAL File No. 06-0831-01S

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:

The following text depicts language changes as follows:

- 1) language existing before 4/11/08 is shown in plain text;
- 2) UNDERLINE indicates an addition to the California Code of Regulations; and
- 3) ~~STRIKETHROUGH~~ indicates a deletion from the California Code of Regulations.

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