



California Forestry Association

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Katharine Carter
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403
kcarter@waterboards.ca.gov

Re: Klamath River Total Maximum Daily Loads and Action Plan (Klamath TMDL)

Dear Ms. Carter,

The California Forestry Association (CFA) submits the following written comments on behalf of our members with regard to the above referenced matter. CFA represents forest landowners, professional resource managers, and the producers of wood products and biomass energy throughout California. Many of our members own, or are dependent on timber supply from the forested lands within the geographic jurisdiction of the North Coast Regional Water Quality Control Board (Regional Board). They manage their lands not only to provide a sustainable timber supply for the manufacture of wood products that Californians and citizens throughout the world rely on, but also to ensure that the public trust resources on those lands are adequately protected for future generations.

In the Klamath TMDL Public Review Draft, Regional Board staff has recommended the adoption of prescriptive implementation measures for timber operations on nonfederal lands. CFA encourages staff delete these recommendations and in the alternative recommend the Regional Board recognize the existing California Forest Practice Act (FPA), Forest Practice Rules (FPR), and timber harvest plan review and approval process as effective in protecting the quality and beneficial uses of water in the forest management context. Therefore, no further implementation measures are necessary.

Staff states throughout the Public Review Draft that it intends to recognize existing regulatory mechanisms for the protection of water resources and will coordinate with other agencies. "Achieving compliance with the Klamath River TMDLs in both states (California and Oregon) will require a coordinated approach that involves state and federal agencies as well as responsible parties in California and Oregon." Public Review Draft at 6-1. "Implementation actions are designed to encourage and build upon on-going, proactive restoration and enhancement efforts in the watershed." Id. at 10. "TMDLs must consider other ongoing regulatory processes in the basin." Id. at 1-7. CFA supports Regional Board efforts to minimize and eliminate the duplication of efforts to restore, enhance, and maintain the quality and beneficial use of the State's waters and encourage other state and federal agencies to follow suit.

The California Board of Forestry (BoF) continues to refine, develop, and adopt regulations to protect the quality and beneficial uses of water in accordance with their authority under the Forest Practice Act (FPA) and in consultation with State and regional water board staff. Existing Forest Practice Rules (FPRs) have already proven effective in achieving water quality objectives for the Klamath River Basin and beyond. Since its inception, the BoF has adopted more than two dozen major rule packages, including more than 1,300 requirements to protect the quality and the beneficial uses of water. Moreover, the BoF has issued a technical addendum devoted entirely to the analysis of cumulative watershed effects. It requires the plan submitter to evaluate the impacts to watershed

resources with the Watershed Assessment Area including sediment discharge into the watercourses, water temperature, organic debris discharge into the watercourse, chemical contamination and peak flow.

And yet, despite existing FPRs regulating all aspects of timber operations throughout the Klamath region, including rule packages that focus specifically on the protection of water quality, staff has ignored their own recommended additional prescriptive implementation measures for canopy shade percentages and stream buffer widths without adequate scientific justification. The existing FPA and FPR have proven effective in protecting the quality and beneficial uses of water and should be recognized as such.

Beyond consulting on all water quality-related regulations under consideration by the BoF, regional boards have a formal role in the implementation of the rules in a manner consistent with other laws, including, but not limited to the Porter-Cologne Water Quality Control Act through the review and approval of timber harvest plans.

California's Regulatory Regime for Timber Operations

Under California law, timber operations may only be conducted pursuant to an approved timber harvest plan (THP or plan). Cal. Pub. Res. Code § 4581. The California Department of Forestry (CalFIRE) is the agency with final authority in the review and approval of those THPs. Id. § 4582.7(e). CalFIRE acts as the lead agency in the process; it consults with other agencies during the process, but ultimately CalFIRE makes the decision whether a plan complies with exhaustive and detailed requirements of the Forest Practice Act (FPA) and FPRs. Id. §§ 4582.7(e), 4582.6.

The State Water Board and its sub-agencies (the regional water quality control boards) have a statutorily designated role in the THP process. Cal. Pub. Res. Code § 4582.6. The regional boards participate on interdisciplinary review teams chaired by CalFIRE. The review teams "review plans and assist in the evaluation of proposed timber operations and their impacts on the environment." Cal. Code Regs. tit. 14, § 1037.5. The Director of CalFIRE cannot approve a THP unless the THP complies with the requirements of the FPA and FPR, which includes meeting water quality standards established by the State Board. Cal. Pub. Res. Code § 4582.7; Cal. Code Regs. tit. 14, §§ 1037.6, 1037.7. Specifically, the Director is charged with the duty to determine if THP "would cause a violation of any requirement of an applicable water quality control plan adopted or approved by the State Water Resources Control Board." Cal. Code Regs. tit. 14 § 898.2(h). If the Director determines the THP would cause such a violation, the THP must be disapproved. Id.

Regional Boards and other agencies and entities have a formal role in the THP review and approval process through their inclusion on review teams. This role is reiterated in the FPR. Typically, a review team meets at least twice to consider whether a THP should be approved. A First Review Team Meeting is held shortly before or shortly after CalFIRE accepts a THP for filing to determine whether a preharvest inspection is necessary and what areas of concern are to be examined during the inspection. Id. § 1037.5(g)(1).

Preharvest Inspections are on-the-ground inspections of the area to be harvested and involve physical investigation of the range of issues considered in the determination of whether to approve a THP, including soil stability, erosion potential, and all other factors implicating water quality. Cal. Pub. Res. Code §§ 4562.5, 4562.7, 4562.9; Cal. Code Regs. tit. 14, §§ 898.1, 912.5, 912.9, 914.2, 932.5, 932.9, 934.2, 952.5, 952.9, 954.2. Following the Preharvest Inspection, each agency that participated in the review will prepare a Preharvest Inspection Report, noting concerns and recommending measures to address them, if any. Cal. Code Regs. tit. 14, § 1037.5(f).

The statutory and regulatory provisions addressing timber harvesting and water quality are exhaustive. For example, Article 6 of the FPR addresses "Water Course and Lake Protection" measures for timber harvesting in minute detail. Article 12 of the FPR does the same for "Logging Roads and Landings." Article 4 of the FPR prescribes "Harvesting Practices and Erosion Control." All of these rules, including any applicable water quality control plan, must be complied with in proposed timber operations before the Director of CalFIRE will approve a THP.

As discussed above, the Director of CalFIRE can approve a THP only if the plan complies with all requirements of the FPA and FPR. CalFIRE is specifically prohibited from approving a THP if implementation of the plan would cause a violation of water quality standards. Id. § 898.2(h). When it approves a THP, CalFIRE is required to issue a notice of approval, which includes specific written responses to any significant environmental issues raised during the review and approval process, including points raised by member of the public. Cal. Pub. Res. Code § 21080.5.

Once a THP is approved, if a regional board disagrees with the approval, it may then request the State Board to appeal that decision to the BoF. Cal. Pub. Res. Code § 4582.9; Cal. Code Regs. tit. 14, §§ 1056-1056.6. In particular, according to the FPA, the State Board "may, not later than 10 days after approval of a plan by the director (of CalFIRE), appeal the approval to the (BoF)." Cal. Pub. Res. Code § 4582.9(a). This administrative process is known as the "Head-of-Agency Appeal." The mere filing of such an appeal mandates that "no further timber operations shall occur under the plan until the final determination of the appeal by the (BoF)." Id. Moreover, the State Board can appeal on the ground that operations on a THP will result in violation of the Porter-Cologne Act or a basin plan. These statutory and regulatory mechanisms exist to ensure that timber operations comply with all applicable water quality requirements.

Because it is a certified regulatory program, the THP process substitutes for the EIR process under the California Environmental Quality Act (CEQA). Cal. Code Regs. tit. 14, § 896(a); see also Id. § 15251(a); Cal. Pub. Res. Code §§ 4582.7(a), 21080.5. In other words, no additional review process – by CalFIRE or any other agency – is necessary before timber harvesting can commence under a plan. Accordingly, the THP review and approval process, by law, satisfies CEQA.

In sum, timber production in California is a highly regulated activity. The THP process comprehensively addresses all aspects and impacts of timber harvesting through a multi-agency effort led by CalFIRE. As a result, operations conducted pursuant to an approved THP necessarily comply with all laws.

Additionally, FPRs are not stagnant. As discussed above, rules are continually refined, developed, and adopted to specifically address water quality and beneficial uses.

Threatened or Impaired Watershed Rules

Over the past 40 years, an extensive and rich scientific literature has developed regarding all aspects of the interaction of riparian forests with streams and their biota. With this in mind, the BoF committed to undertaking a science-based review of FPRs for protection of watersheds with anadromous salmonid species (T/I Rules). These rules establish requirements for Timber Harvest Plan disclosures and operational practices permitted under the FPRs for commercial timber harvesting on private lands where state or federally listed anadromous salmonid species (Coho salmon, Chinook salmon, and Steelhead) are present or can be restored. The T/I Rules are being reviewed to determine their adequacy in protecting and restoring the species, its habitat, and other beneficial uses of water.

To facilitate the understanding of current science, and to inform any necessary amendments to the T/I Rules, the BoF conducted a review of recent scientific literature on forest management effects on riparian zones and the five riparian exchange functions (biotic and nutrients, coarse wood debris, heat, sediment, and water) that support anadromous salmonids. The BoF commissioned a highly qualified consortium of contractors, Sound Watershed Consulting (SWC), to conduct the literature review.

Focusing on forest management effects on riparian function was given priority by the BoF because of the potential direct impacts to salmonids and the beneficial uses of water that can occur from operations in riparian zones: tree harvesting in buffer strips, equipment encroachment, road crossings buffer strip surface vegetation disturbance from site preparation or prescribe burning, riparian restoration, and water drafting. Additionally, the existing T/I Rules have substantive prescriptive requirements for these activities and ensuring the rules adequately protect water quality, are enforceable and do not unreasonably burden landowners is a primary goal of the rule review.

Although the literature review focused on forest management effects directly associated with or occurring in riparian areas, the BoF recognizes the need for reviewing other literature that informs the forest management effects on beneficial uses. Literature that addresses upland harvesting, cumulative effects, monitoring, geologic stability, and forest roads are all pertinent for the rule review.

The literature review process was a pilot for developing science-based information for regulation development. It was highly transparent involving stakeholders, scientists, and other representatives from state and federal agencies, including the Regional Board.

The BoF also appointed a Technical Advisory Committee (TAC) to serve as its scientific advisors during the literature review and review of proposed amendments. The TAC was appointed in September 2006, and was selected from a wide range of world-renowned scientists from universities, public agencies and private consultants from the west coast of the USA. Actively participating on the TAC were a Senior Engineering Geologist from the State Water Quality Control Board and scientists representing the UC Berkeley Extension Services, National Marine Fisheries Service, California Department of Fish and Game, Cal FIRE, Humboldt State University, California Poly State University San Luis Obispo, California Geological Survey, private timberland owners, and private watershed consultants.

The TAC met approximately 25 times as a team. All meetings were open and available for public participation, and officially noticed to a wide group of stakeholders to encourage participation. Vital leadership and work products were provided by the TAC leading to the delivery of the final SWC literature review. The value and expertise brought to the BoF's rule review by the TAC and SWC cannot be understated.

The BoF released draft amendments to the T/I Rules for public comment on May 8, 2009 and is committed to adopting of any regulatory amendments by October 2009 for implementation on January 1, 2010.

As stated in the Public Review Draft, "Regional Board staff has recommended that the Klamath implementation plan require compliance with the T/I rules throughout the basin, as was required by the Scott and Shasta TMDL implementation plans." This expansion extends to timberland above the Iron Gate and COPCO reservoirs within the Shovel Creek watershed. CFA believes this is an unnecessary and inappropriate expansion of the T/I rules. First, Scott and Shasta Basin-wide compliance with the T/I rules was not required by the Scott and Shasta TMDL implementation plan.

Second, the T/I rules were specifically crafted to protect anadromous salmonids. Basin-wide application is inconsistent with that purpose because populations of anadromous salmonids do not exist basin-wide due to natural and anthropogenic barriers. Temperatures above the Iron Gate and COPCO reservoirs may actually be too cold for anadromous salmonids for optimal growth and survival. And finally, basin-wide expansion of the T/I rules is unnecessary because the existing FPRs are already protecting water temperatures. Staff has failed to demonstrate how historic, previous or current private forest practice measures are allowing water temperatures to increase. Monitoring data indicates stream water temperatures remain constant and meet water quality objectives following timber harvesting under existing FPRs.

CFA believes that the current statutory and regulatory processes effectively protect the quality and beneficial uses of water in the forest management context.

Recommendation

CFA urges the Regional Board to minimize and eliminate duplication of efforts to restore, enhance, and maintain the quality and beneficial use of the State's waters by recognizing and accept the FPRs and the THP review and approval process as effective implementation measures to meet TMDL requirements.

Sincerely,



Michele Dias
VP for Environmental and Legal Affairs

Links

SWC Science Literature Review: <http://www.soundwatershed.com/BOF.htm>

Noticed T/I Rule Amendments: http://bof.fire.ca.gov/regulations/proposed_rule_packages/