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## North Coast Regional Water Quality Control Board

January 18, 2022

Edith Hanigan, Executive Officer  
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Board of Forestry and Fire Protection  
P.O. Box 944244-2460  
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Dear Executive Officer Hanigan,

Subject: NCRWQCB comments regarding the Board of Forestry's "Emergency Notice Fuel Treatments and RPF Responsibilities"

The North Coast Regional Water Quality Control Board (NCRWQCB) is submitting this comment letter to you and the Board of Forestry and Fire Protection (Board of Forestry, BOF) regarding the "Emergency Notice" process established through 14 CCR §§ 1052 of the Forest Practice Rules (FPRs). We appreciate this opportunity provide our comments.

Due to the increase in Emergency Notice use as a result of California's rapidly expanding wildfire regime, NCRWQCB staff believe that the FPR ministerial authorization process for post-fire timber salvage operations should be reevaluated and modernized to ensure that it is sufficiently protective of environmental resources.

### **Background**

California is experiencing an unprecedented increase in wildfire activity with respect to the total number of fires, cumulative acreage burned, and fire severity across its landscapes. According to the California Department of Forestry and Fire Protection (CAL FIRE), 18 of the 20 largest wildfires<sup>1</sup> in California's history occurred during the 21st century, and amongst them approximately 61% of their total combined acreage burned in the last two years alone. Experts from many disciplines suggest that the circumstances that drive wildfire are anticipated to only increase as the effects of climate change manifest throughout the state's landscape over time.

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<sup>1</sup> [https://www.fire.ca.gov/media/4jandlhh/top20\\_acres.pdf](https://www.fire.ca.gov/media/4jandlhh/top20_acres.pdf)

In response, California has been taking aggressive measures to adapt to this new climate paradigm to protect communities and natural resources. These measures include actions such as: Governors' Executive Orders to increase the pace-and-scale of fuels management, creation of the Governor's Forest Management Task Force and its associated Wildfire and Forest Resilience Action Plan, establishment of joint stewardship agreements with federal partners to treat up to one million acres per year beginning in 2025, major expansions of funding investments, creation of new streamlined regulatory processes, and initiatives to "Cut Green Tape" to support the protection and restoration of natural resources.

Out of these efforts has come a new wave of streamlined regulatory programs designed to expedite wildfire prevention and remediation work on the ground, including the Board of Forestry's California Vegetation Treatment Program (CalVTP) and the CalOES Private Property Debris Removal (PPDR) Program. Several more regulatory programs are also under development, such as the State Water Resources Control Board's Utility Wildfire Mitigation General Order and the Restoration General Order.

The potential tradeoff of streamlining regulatory programs to facilitate accelerated pace-and-scale of fuels management and related activities can be increased environmental risk due to decreased regulatory oversight. However, each of these new programs includes significant planning, identification of environmental protection standards, and agency collaboration before they are approved to avoid foreseeable and preventable impacts to resources.

"Non-discretionary" or "ministerial" regulatory authorizations, like the Forest Practice Rules Emergency Notice process established through 14 CCR §§ 1052, provide very limited regulatory oversight and have the potential to result in significant environmental impacts, as compared to "discretionary" authorizations, like those found in the normal timber harvest planning process. Existing laws and regulations that govern resource protection and extraction should be evaluated to determine whether 20<sup>th</sup> century environmental regulations are still appropriate in a 21<sup>st</sup> century environment.

### **Normal Timber Harvest Planning and Review Process**

Under normal circumstances (i.e., not following a wildfire) timber harvesting of green trees involves comprehensive oversight, through multi-faceted "discretionary" regulatory process, by California's state regulatory agencies, including CAL FIRE, the California Department of Fish and Wildlife, the California Geological Survey, and the Regional Water Quality Control Boards.

This multi-disciplinary review team process provides the necessary opportunities for the regulatory agencies to evaluate a proposed timber harvest plan, conduct inspections, make recommendations, and allow public engagement, in order to limit potential effects on the environment. This process includes clear articulation of all the environmental protection standards that are required, including individual agency permits as well as conformance with the California Environmental Quality Act (CEQA), and clearly defined

guidance with respect to which Forest Practice Rules (FPRs) apply. As discussed below, this differs significantly from the rules for Exemptions and Emergency Notices, which simply state that all “operational provisions” of the FPRs apply but does not define the term.

Additionally, typical timber harvest planning occurs in an environmental setting where silvicultural prescriptions are evaluated to determine whether proposed timber harvesting may pose a risk to aquatic or terrestrial resources, forest infrastructure such as roads, trails and watercourse crossings are closely reviewed and held to strict standards for improvement or design, and existing landscape features such as unstable landforms and landslides can be avoided. These activities occur in a setting that includes clearly defined rules for riparian buffer zones and tree retention standards, as well as ground cover to act as filter strips to minimize sediment discharges to watercourses.

There is a stark contrast between the timber harvest planning and approval process and the condition of the environmental setting and minimal regulatory oversight inherent in Emergency Notices. These differences warrant assessment of the appropriateness of this ministerial permitting approach given the contemporary increase in wildfire activity.

### **Emergency Notice Authorizations**

Post-fire timber salvage projects implemented pursuant to the rules for Emergency Notices (EMs) under 14 CCR §1052, receive ministerial review and acceptance by CAL FIRE. A Registered Professional Forester simply submits a Notice of Emergency Timber Operations to CAL FIRE which serves as notification of the landowner’s intention to conduct the activities, with as little as 5 days advanced notice. CAL FIRE simply determines whether the Notice is complete, at which time it is accepted for filing and operations may commence. Public and review team agency review of the proposed EM project, pre-harvest inspections, agency recommendations, and public engagement, are not required in order to conduct a post-fire salvage project.

In the North Coast Region, EMs are automatically covered under Order No. R1-2014-0011, Categorical Waiver of Waste Discharge Requirements for Discharges Related to Timber Harvest Activities on Non-Federal Lands in the North Coast Region (Categorical Waiver), once CAL FIRE has accepted the Notice for the project. The NCRWQCB’s Categorical Waiver was adopted at a time when EM were less prevalent, and as such, was approved to function as additional ministerial permit coverage that relied largely upon the CAL FIRE process.

Section I of the Categorical Waiver includes General Conditions that apply to all enrolled projects, including the following:

1. The landowner shall comply with all applicable requirements, waste discharge prohibitions specified in the Basin Plan, and policies adopted by the State Water Board.

2. The landowner shall conduct timber harvest activities and erosion control maintenance in compliance with the FPRs. In addition, FPRs and THP conditions (including but not limited to, FPR sections 896, 898, 914 (934), 916 (936), 923 (943) and mitigation measures identified and required by CAE FIRE that are intended to protect the beneficial uses of water shall constitute enforceable conditions under this Order.

In contrast to a normal timber harvest plan, post-fire timber salvage operations can occur with very minimal regulatory oversight, in an extremely expedited manner, while on-the-ground conditions are at their most vulnerable.

### **2019 Emergency Notice Monitoring Report**

In 2019, CAL FIRE and the Board of Forestry developed the first annual report to the legislature, as required by PRC §4589, titled *Emergency Notice of Timber Operations Monitoring and Report on Exemption Usage* (2019 Monitoring Report). The 2019 Monitoring Report was informative about the efficacy of this ministerial permitting process because it identified significant shortcomings on EM project performance relative to water quality protection; 60% of projects had an “Acceptable” outcome, while 17% were deemed “Substandard,” and 23% were determined to be “Unacceptable.” The bulk of the problems identified in the 2019 Monitoring Report were erosion and sediment discharges related to roads and watercourse crossings.

In December 2019, the NCRWQCB provided written and verbal comments on the 2019 Monitoring Report to the Board of Forestry. The NCRWQCB December 2019 letter included five comments regarding the 2019 Monitoring Report and two general comments regarding the EM authorization process overall.

Although several of the NCRWQCB’s comments remain unresolved, several important actions have been implemented. A coordinated effort between the Board of Forestry, CAL FIRE, and the review team agencies have taken numerous steps to improve EM project performance, including (1) increased outreach to registered professional foresters, licensed timber operators, and landowners about their responsibilities to ensure that EM projects are implemented in accordance with the Forest Practice Rules, (2) increased inspections of EM projects, and (3) greater coordination between the agencies to improve post-fire salvage operations. We believe those steps are likely translating into greater environmental protection and stakeholder understanding about the multi-agency regulatory requirements associated with EMs.

However, the NCRWQCB continues to identify issues related to several aspects of the Forest Practice Rules EM authorization process that warrant additional evaluation and improvements, which I describe in greater detail below. It is our understanding that other review team agencies have also identified opportunities for improvement to the EM authorization process

### **Operational Provisions**

Forest Practice Rules §1052 – Emergency Notice, states the following:

*(b) Timber Operations pursuant to an emergency notice shall comply with the Rules and regulations of the Board. A person conducting Timber Operations under and Emergency Notice shall comply with all operational provisions of the Forest Practice Act and District Forest Practice Rules applicable to “Timber Harvest Plan”, “THP”, and “plan”.*

Although the language in Forest Practice Rules §1052 appears to include all the same provisions that apply to a routine timber harvest plan, there are many different interpretations regarding which provisions apply, which do not, and which are considered “feasible” to implement. Other operational provisions required of a timber harvest plan, such as the identification of significant existing and potential erosion sites per FPR §923.1(e) could require certain activities that may fall outside of the non-discretionary arena of the expedited EM authorization process. As such, it remains unclear which “operational provisions” of the FPRs specifically apply to EMs, as these have not yet been defined.

The lack of clear definitions of which operational provisions apply leaves CAL FIRE, the review team agencies, RPFs, and licensed timber operators in an ambiguous, and at times disagreeable regulatory arena. Further, the lack of clarity significantly increases the risks for individual landowners and the environment.

We believe that clarification on which FPR operational provisions apply to EM projects would greatly improve regulatory oversight, project implementation, environmental protection, and reduce landowner liabilities.

**Comment 1: The Board of Forestry and/or CAL FIRE should develop and distribute guidance regarding all operational provisions of the Forest Practice Rules that apply to Emergency Notices.**

### **Road and Watercourse Construction/Reconstruction**

Roads and watercourse crossings can be one of the largest sources of pollution discharge, and therefore they are highly scrutinized and reviewed during normal timber harvest plan activities. The BOF and CAL FIRE 2019 Monitoring Report identified “improved oversight” of roads and watercourse crossings as one of the areas that has the greatest potential environmental lift as part of the EM process.

However, CAL FIRE management has recently clarified that post-fire timber salvage activities conducted through an authorized EM project are strictly “non-discretionary” (aka “ministerial”) and that road and watercourse crossing construction/reconstruction activities fall outside the realm of the EM authorization.

Forest Practice Rules §916.9(t)(4) – Emergency Notices, states that “no timber operations can occur within a watercourse and lake protection zone, equipment limitation zone, or equipment exclusion zone except for construction or reconstruction of ‘approved’ watercourse crossings.”

The “approval” of these watercourse crossings suggests a discretionary review/approval process exists to ensure that an EM is conforming with some regulatory requirements. In general, the Forest Practice Rules infer, and CAL FIRE inspectors concur, that the approval of watercourse crossing construction or reconstruction activities is delegated to the California Department of Fish and Wildlife (CDFW).

It should be noted that under Section 13260 of the California Water Code, and the State Water Resources Control Board’s Nonpoint Source Implementation and Enforcement Policy, the discharges of waste (e.g., sediment) to a water of the state requires authorization from the State or Regional Water Board through waste discharge requirements. As such, road or watercourse crossing construction or reconstruction activities necessary to conduct a CAL FIRE authorized EM project are not automatically “approved” as part of a regional water board permit.

**Comment 2: The Board of Forestry and CAL FIRE should define what the “approval” process is for watercourse crossings that must be constructed or reconstructed to support an Emergency Notice.**

**Comment 3: The Board of Forestry should clarify whether CAL FIRE is expected to enforce conformance with Forest Practice Rules §916.9(t)(4), by ensuring that all watercourse crossing construction and reconstruction activities are indeed “approved”.**

### **Conclusion**

The NCRWQCB supports the Emergency Notice process as an efficient tool for landowners in areas affected by wildfires wishing to restore forest conditions and salvage value from their burned timber stands. However, due to the increased occurrence of catastrophic wildfires and the continued trend towards increased acreage of EMs being utilized on our state’s forestlands, updates to the existing rules are warranted and necessary to ensure adequate environmental protection.

We recognize the work the Board has done over the past nearly 50 years in collaboration with responsible agencies and members of the public to evaluate the efficacy of the FPRs and to revise FPRs when warranted to improve environmental protections. As a whole this work has resulted in the FPRs providing one of the most comprehensive and effective package of rules for environmental protection from timber operations in the country. In this letter we are making the case that additional work is warranted so that landowners whose timberlands have been affected by wildfires have the tools available to salvage value from their burned timber while still providing clear and adequate rules for environmental protection. The lack of the robust review process as is built into the THP planning and approval process makes it essential that all necessary protective measures are included in the rules and clearly defined so as to ensure environmental protection to the greatest extent possible. To reiterate my recommendations from above:

- The rules should either provide a definition of “operational provisions” or if that is too unwieldy, omit the term and simply state in the applicable rule section, which rules apply to EMs. For example, we believe a significant benefit would derive from clarifying that the “Road Rules” [14 CCR 923] apply to EMs.
- The rules should provide clear guidance with respect to the “approval” process for construction or reconstruction of watercourse crossings to ensure that they are fully functional following emergency timber operations.

Thank you for the opportunity to provide comments. NCRWQCB staff are available to continue collaboration with the Board and CAL FIRE to work towards evaluating the existing rules for EMs and revising them as needed.

Sincerely,

Matthias St. John  
Executive Officer  
North Coast Regional Water Quality Control Board

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