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From: Fowler, David@Waterboards <David.Fowler@waterboards.ca.gov>
Sent: Tuesday, January 16, 2024 2:52 PM
To: VanSusteren, Jane@CALFIRE
Cc: Hanks, Michael@Waterboards; Meurer, Jonathan R.@Waterboards; Ramaley, John@CALFIRE; Boone, Mathew@CALFIRE; Ryan, Timothy@Wildlife; Chasin, Elliot@Wildlife
Subject: 14 CCR 916.9(s)(4), Construction or Reconstruction of "approved" Watercourse crossings in ASP Watersheds
Attachments: DRAFT_916.9(s)_Water_Boards.docx

Hello Jane,

This e-mail regarding the ongoing discussion in the Board of Forestry and Fire Protection, Forest Practice Committee, about Forest Practice Rule 14 CCD 916.9(s)(4)

Over the course of the last year, the Water Boards have worked with CAL FIRE, CDFW, and the Forest Practice Committee of the Board of Forestry and Fire Protection to explore ways to revise and clarify the language of 14 CCR 916.9(s)(4), part of the Anadromous Salmonid Protection rules.

Subsection 916.9(s) states, in pertinent part, "(s) Exemption notices - No Timber Operations are allowed in a WLPZ, or within any ELZ or EEZ designated for Watercourse or lake protection, under exemption notices except for: ... (4) Construction or reconstruction of approved Watercourse crossings." Early last Spring, at the beginning of the discussions, the Water Boards stated that watercourse crossing construction and reconstruction was inappropriate under an exemption and therefore the subsection should simply be removed. The subsection has two basic problems, 1) it is not possible to "approve" crossing construction or reconstruction under a ministerial permit, and 2) Exemptions are assumed to be "de minimis." That is, they do not require a CEQA equivalent process because they are assumed to be projects with less than significant impacts. Watercourse crossing construction and reconstruction, however, do have the potential to result in significant environmental impacts and therefore would raise the bar above the 'de minimis" threshold. In addition, 14 CCR 1038.1(c)(8), the standard state-wide Exemption rule language under the Forest Practice Rules, states very clearly, "No new road construction or reconstruction, as determined pursuant 14 CCR § 895.1." This includes crossings.

The Water Boards have attempted to entertain the idea discussed in the Committee that use of equipment that is on site for an Exemption to complete "previously approved" watercourse crossing construction and reconstruction as a separate project, not related to the Exemption could be allowed, and we proposed wording to that effect at the December Forest Practice Committee meeting. But a question during the meeting about whether a MATO would be considered an "existing agreement" has caused us to reconsider. We proposed wording referring to "an existing agreement with CDFW" because we believed the wording proposed during the November meeting to simply "describe and map" watercourse crossings proposed for construction and reconstruction was too broad and would allow watercourse crossing construction and reconstruction without review. The response from CDFW that a MATO would be considered an existing agreement made it clear that the "existing agreement with CDFW" wording could have the same result, especially for large landowners with ownership-wide exemptions.

It should be noted that currently, a landowner who has an already permitted or otherwise legal project may use whatever appropriate equipment is available to complete the project regardless of the existence of an Exemption. They are separate projects. For example, an ownership-wide exemption does not prevent a landowner from using the same equipment for both the Exemption and any other permitted or otherwise legal project within the ownership.

The combination of the possibility of non-reviewed watercourse crossing construction and reconstruction under either the November or December proposed rule wordings, and the existing prohibition of any road construction or reconstruction in 14 CCR 1038.1 make it clear that our original position from last Spring is the correct one: 14 CCR 916.9(s)(4) should simply be removed. It is incompatible with both the existing standard rule and the "de minimis" assumption of Exemptions.

Please note that this is with regard to only 14 CCR 916.9(s)(4), Exemptions, and not 916.9(t)(4), Emergency notices, or any to the proposals for 14 CCR 1052, the standard rules for Emergency notices.

Thank you.

David Fowler

CALIFORNIA Water Boards

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