Board of Forestry and Fire Protection

FINAL STATEMENT OF REASONS (FSOR), pursuant to GOV §11346.9(a)

“Wet Areas, Meadows, and Restoration Activities, 2024”

Board of Forestry and Fire Protection

**Title 14 of the California Code of Regulations**

**Division 1.5, Chapter 4,**

**Subchapters 1, 4, 5, 6, and 7**

**Amend 14 CCR §§ 895.1, 912.7 (932.7, 952.7), 913.4 (933.4, 953.4), 916.3 (936.3, 956.3), 921.4 (961.4), 923.1 (943.1, 963.1), 923.2 (943.2, 963.2), 923.4 (943.4, 963.4), 923.9 (943.9, 963.9), 953.7, 1034, 1038.2, 1038.4, 1051, 1051.4, 1072.4, 1090.5, 1092.09, 1094.6, 1094.8**

# UPDATE OF INFORMATION CONTAINED IN ISOR (pursuant to GOV §11346.9(a)(1))

No information contained in the Initial Statement of Reasons (ISOR) requires an update. All material relied upon was identified in the ISOR and made available for public review prior to the close of the public comment period.

# SUMMARY OF BOARD’S MODIFICATIONS TO 45-DAY NOTICED RULE TEXT AND INFORMATION REQUIRED PURSUANT TO GOV §11346.2(b)(1)) (pursuant to GOV §11346.9(a)(1))

All revisions to the 45-Day noticed Rule Text are summarized below.

Within 913.4(e)(6), 933.4(e)(6), and 953.4(e)(6), the 45-day rule text removed text requiring that the result of the consultation with local Regional Water Quality Control Boards be included in the plan. This text was restored and noticed for 15 days.

# MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a mandate on local agencies or school districts.

# COST TO ANY LOCAL AGENCY OR SCHOOL DISTRICT WHICH MUST BE REIMBURSED IN ACCORDANCE WITH THE APPLICABLE GOVERNMENT CODE SECTIONS COMMENCING WITH GOV §17500 (pursuant to GOV §11346.9(a)(2)):

The adopted regulation does not impose a reimbursable cost to any local agency or school district.

# ALTERNATIVE 3, BOARD’S ADOPTED ALTERNATIVE (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4)): Adopt Rulemaking Proposal as Modified Through Formal Public Review and Comment Process

The Board selected Alternative #3 as proposed.

The proposed action is the most cost-efficient, equally or more effective, and least burdensome alternative. Alternatives 1 and 2 would not be more effective or equally effective while being less burdensome or impact fewer small businesses than the proposed action. Specifically, alternatives 1 and 2 would not be less burdensome and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the authorizing statute or other law being implemented or made specific by the proposed regulation than the proposed action. Additionally, alternatives 1 and 2 would not be more effective in carrying out the purpose for which the action is proposed and would not be as effective and less burdensome to affected private persons than the proposed action or would not be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action. Further, none of the alternatives would have any adverse impact on small business. Small business means independently owned and operated, not dominant in their field of operations and having annual gross receipts less than $1,000,000.

ALTERNATIVES DETERMINATION (pursuant to GOV §11346.9(a)(4) and (5))

No other alternatives have been proposed or otherwise brought to the Board's attention, except as set forth in the ISOR and provided herein in the summary and responses to comments. Based upon the findings below and a review of alternatives the Board has determined the following:

* No alternative considered would be more effective in carrying out the purpose for which the regulation was intended.
* No alternative would be as effective and less burdensome to affected private persons than the adopted regulation.
* No alternative would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.
* No alternative considered would lessen any adverse economic impact on small businesses.

**FINDINGS (BASED ON INFORMATION, FACTS, EVIDENCE AND EXPERT OPINION) TO SUPPORT THE ALTERNATIVES DETERMINATION**

* The Board finds that the adopted alternative improves the clarity and consistency of terms used throughout the rules.
* The Board finds the adopted alternative strikes a balance between performance based and prescriptive standards.
* The Board finds that a minimum level of prescriptive standards were needed to implement the statute.
* The Board finds that in some cases, encroachment by woody species has decreased the historic extent of meadows. The Board finds that restoration of the historic extent of these meadows should be permitted under the Rules’ allowances for meadow restoration.
* The Board finds the adopted alternative fulfills the obligations of the Board, specified in statute, and represents a product based upon compromise and the greatest degree of consensus achievable at the time the Board authorized noticing of these amendments.
* The Board finds agency representatives reviewed and provided input into these amendments.

# BRIEF SYNOPSIS OF ADDITIONAL ALTERNATIVES CONSIDERED AND REJECTED (update, pursuant to GOV §11346.9(a)(1)), of information pursuant to GOV §11346.2(b)(4))

## Alternative #1: No Action Alternative

The Board considered taking no action, but this alternative was rejected because it would not address the problem.

## Alternative #2: Make regulation less prescriptive

This action would replace the prescriptive standards for Wet Areas, Meadows, and Restoration Activities with performance-based regulations. This action could lead to issues of clarity surrounding implementation and enforcement of the regulations. This alternative may reduce clarity and consistency with other portions of the rules which rely upon the existence of the current operational limitations in order to ensure that forest resources are preserved.

# SUMMARY AND RESPONSE TO COMMENTS (pursuant to GOV 11346.9(a)(3))

The comments below are identified in the following format: The letter S or W followed by a series of numbers separated by a hyphen, followed by the name and affiliation (if any) of the commenter (e.g., W1-8: John Doe, Healthy Forest Association).

S: Indicates the comment was received from a speaker during the Board hearing associated with the Notices of Proposed Action.

W: Indicates the comment was received in a written format.

1st number: Identifies the comments in the order in which it was received.

## WRITTEN COMMENTS AND RESPONSES RESULTING FROM 45-DAY NOTICE OF PROPOSED RULEMAKING PUBLISHED November 19, 2021

**Comment W1 (Phil Crader, Assistant Deputy Director, Division of Water Quality, State Water Resources Control Board**

Re: Wet Areas, Meadows, and Restoration Activities, 2024, dated February 16, 2024,

Title 14 of the California Code of Regulations

Dear Members of the Board of Forestry and Fire Protection,

The State Water Resources Control Board (State Water Board) supports the approval of the Board of Forestry and Fire Protection's (Board of Forestry) proposed rulemaking entitled "Wet Areas, Meadows, and Restoration Activities, 2024."

The State Water Board appreciates the Board of Forestry's addressing the Wet Areas issue, an item we highlighted in our October 14, 2022, letter in response to the Board of Forestry's call for regulatory review. We further appreciate having had the opportunity to provide substantial input during the review process, and working cooperatively and collaboratively with members of the Board of Forestry, their staff, staff from the California Department of Forestry and Fire Protection, the California Department of Fish and Game, and members of the public.

As summarized in the Initial Statement of Reasons, the issue is that the current definitions for the terms "Meadows and Wet Areas" and "Wet Meadows and Other Wet Areas" have led to confusion about protections due to an atmosphere of regulatory uncertainty. We believe the proposed rulemaking to consolidate the two definitions into a single definition for "Wet Areas" provides increased clarity and will allow for a more consistent application on the landscape.

Thank you for providing this opportunity for the State Water Board to comment on the

proposed rule package.

Sincerely,

Phil Crader, Assistant Deputy Director

Division of Water Quality, State Water Resources Control Board

**Response:** The Board appreciates the support of the State Water Board.

**Rule Text Change:** No

**Comment W2 (Rudolf Guiliani, Foresters in Admiration of Riparian Timberlands)**

Dear Ms. Van Susteren

In reviewing the proposed revisions to Sections 913.4, 933.4, and 953.4, Foresters in Admiration of Riparian Timberlands (FART) would like to voice the following concern:

Provision (e)(6) requires project proponents to consult with the California Department of Fish and Wildlife (and Regional Water Quality Control Boards in some instances), prior to the submittal of a plan, but proposed revisions to (e)(6) on lines 16 and 17 of page 4 eliminate the requirement for the project proponent to provide documentation of the consultation to CAL FIRE.

This results in a condition where multiple agency personnel may spend a great deal of state time and resources developing recommendations that will never make it to the Lead Agency. This process will waste a bunch of time, which stinks for everyone, and amount to nothing but silence at the end: a classic "Silent but Deadly" situation.

Additionally, the "Initial Statement of Reasons" does not describe the specific purpose or necessity of the proposed repeal, as required by Section 10 of Title 1 of the California Code of Regulations.

FART would loudly recommend retaining the existing and functional requirement to include documentation of agency consultations in plans where such consultation is required by law.

Respectfully,

Rudolph Giuliani (not that one)

**Response:** The Board approved a SSOR and modified rule text for 15-day noticing at the June 19 meeting, restoring the language relevant to inclusion of consultation with local Regional Water Quality Control Boards in the plan under operations pursuant to 913.4(e)(6), 933.4(e)(6), and 953.4(e)(6).

**Rule Text Change:** Yes

## VERBAL COMMENTS AND RESPONSES RESULTING FROM PUBLIC HEARING CONDUCTED May 5, 2022

**Comment S1 (Dave Fowler, North Coast Regional Water Quality Control Board):**

This item was an issue that the Water Boards brought up in 2022 call for Regulatory Review. They appreciate the board taking this on, appreciate the work from the Management Committee. The rule text went through several iterations, all stakeholders had input. They appreciate this rulemaking.

He thinks that the summary in the agenda tells it like it is, that “The proposed action aligns definitions with appropriate ecological systems, allows for accurate protections of environmental resources in an uncertain climate, and expands the potential ecosystems eligible for restoration work.” This was the goal of this rulemaking and he believes that it has been achieved.

**Response:** The Board appreciates the support of the North Coast Regional Water Quality Control Board.

**Rule Text Change:** No

**Comment S2 (Tim Ryan, California Department of Fish and Wildlife):**

He echoes Fowler in support of this rulemaking for the same reasons. He cites that the rulemaking had several iterations, significant collaboration, and likes that we ended up with something straightforward that achieves those goals.

**Response:** The Board appreciates the support of CDFW.

**Rule Text Change:** No