Board of Forestry and Fire Protection

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

Watercourse Crossings and Emergency Notice Watercourse Crossing Requirements, 2025

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

**Division 1.5, Chapter 4,**

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

**Amend 14 CCR §§ 1038(d), 1038.3(k), and 1052.4, repeal § 1038(f), and adopt §1038.3(x).**

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

One item in the ISOR requires an update. The “INTRODUCTION INCLUDING PUBLIC PROBLEM, ADMINISTRATIVE REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS (pursuant to GC § 11346.2(b)(1)) …NECESSITY (pursuant to GC § 11346.2(b)(1) and 11349(a))….BENEFITS (pursuant to GC § 11346.2(b)(1))” erroneously cites the California State Water Resources Control Board’s letter as a response to the Board’s 2023 call for regulatory review. It was instead a response to the 2022 call for regulatory review.

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))

There are no revisions to the 45-Day rule text as noticed.

# 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 the proposed rule change provides adequate protections for watercourse during Emergency Notice Timber Operations.
* The Board finds that the proposed rule change creates consistency between the Forest Practice Rules and Fish and Game Code.
* The Board finds other changes to this rule package are necessary to improve the consistency and clarity of the Rules.
* The Board finds that representatives from trustee agencies 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 mapping requirements for watercourse crossings in Emergency Notice Timber Operations 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 22, 2024

**Comment W1** Nick Martarano, Assistant Deputy Director Division of Water Quality, State Water Resources Control Board:

The State Water Resources Control Board and Regional Water Quality Control Boards (collectively the Water Boards) support the approval of the Board of Forestry and Fire Protection’s (Board of Forestry) proposed rulemaking entitled “Watercourse Crossings and Emergency Notice Watercourse Crossing Requirements, 2025.” The Water Boards appreciates the Board of Forestry’s efforts to address watercourse crossings under Exemptions and Emergency Notices in the Anadromous Salmonid Protections Rules, as well as construction and reconstruction standards in Emergency Notices under the Forest Practice Rules.

We appreciate the opportunity to provide input during the review process, working collaboratively with the Board of Forestry, their staff, and others, including California Department of Forestry and Fire Protection, the California Department of Fish and Game, the California Geological Survey, and members of the public. Thank you for providing this opportunity for the Water Boards to comment on the proposed rule package.

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

**Rule Text Change:** No

**Comment W2** Nick Martarano, Assistant Deputy Director Division of Water Quality, State Water Resources Control Board:

This rule text provides substantial improvement in the mapping and tracking of Significant Existing or Potential Erosion Sites on Emergency Notices.

Addressing these issues is critical for improving sediment management in forested areas. Watercourse crossings are the most significant source of human-caused sediment delivery to waters. The Water Boards believe that this rulemaking effort improves the current rules and provides metrics to ensure construction and reconstruction of watercourse crossings under Emergency Notices comply with the Forest Practice Rules. They look forward to future discussion to address Significant Existing or Potential Erosion Sites on Emergency Notices.

**Response:** The Board appreciates the support of the Water Boards as pertains to prevention watercourse sedimentation.

**Rule Text Change:** No

**Comment W1** Nick Martarano, Assistant Deputy Director Division of Water Quality, State Water Resources Control Board:

The existing regulations lack clarity, creating potential disparities in protection under Exemptions and Emergency Notices versus standard rules. Requirements for work in Anadromous Salmonid Protection watersheds contains specifications for the construction or reconstruction of watercourse crossings under Exemption Notices, while current regulations do not allow the construction or reconstruction of watercourse crossings under Exemption Notices. The proposed rule revisions address this issue by providing clear and consistent regulatory standards for watercourse crossings under the Anadromous Salmonid Protections rules and better ensure construction and reconstruction of watercourse crossings under Emergency Notices comply with the Forest Practice Rules.

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

**Rule Text Change:** No

## VERBAL COMMENTS AND RESPONSES RESULTING FROM PUBLIC HEARING CONDUCTED January 23, 2025

**Comment S1 Tim Ryan, CDFW:** He would like to express his agency’s support for this rule package. He echoes water board letter’s statements about the utility of this rule. He appreciates that the rule change makes assumptions about the 1600 permit process clear and straightforward, brings the Forest Practice Rules in line with Fish and Game Code and adds mapping requirements that make clear where emergencies are occurring. This rulemaking goes a long way to clarify process in emergencies and exemptions.

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

**Rule Text Change:** No

**Comment S2 Dave Fowler, North Coast Regional Water Quality Control Board:** He would like to correct a statement in the ISOR, the Water Boards letter was in response to the 2022 call for regulatory review, instead of the 2023 call for regulatory review, as stated. He appreciates the Board taking it up. He would like to reflect on how important it is to get input from everyone – this rulemaking had input from Water Boards, CAL FIRE, CDFW, CGS, industry, public, and board members. He appreciates the work of the committee members.

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

**Rule Text Change:** No