
North Coast Regional Water Quality Control Board

April 27, 2022

J. Keith Gilliss
Chair, California Board of Forestry and Fire Protection
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: Comments on the Board of Forestry and Fire Protection proposed Meadows, Wet Areas, and Cutover Land Amendments, Title 14 of the California Code of Regulations

File: Timber, Board of Forestry, General

Dear Chair Gilliss:

The North Coast Regional Water Quality Control Board (Regional Water Board) appreciates this opportunity to provide comments on the proposed Meadows, Wet Areas, and Cutover Land Amendments (Amendments). We are grateful to have had the opportunity to have participated and provided input during discussions of the Amendments during Management Committee meetings.

Regional Water Board staff are very much in favor of consolidating the various definitions of “Meadows and Wet Areas” and “Wet Meadows and Other Wet Areas” currently contained in the Forest Practice rules. We believe a single definition will provide improved clarity. As stated in our previous July 2021 and January 2022 letters, we believe that this is also an opportunity to provide inter-agency consistency and regulatory certainty.

In order to provide inter-agency consistency and regulatory certainty, we proposed using the combined Regional and State Water Boards’ (Water Boards) definition to define the term “Wet Areas” in the Forest Practice Rules. It is a definition that was developed over more than a decade of outreach, stakeholder review, and vetting. We were pleased to see that it was the primary definition in the drafts of the proposed rule revisions at during the August and September Committee meetings. We heard no objections to the definition at either meeting. We were therefore puzzled when the Water Boards’ definition subsequently withdrawn from the proposed rule language.

Background

To reiterate the information provided in our July and January letters, the primary responsibility for the protection and enhancement of water quality in California has been assigned by the California legislature to the State Water Resources Control Board (State Water Board) and the nine regional water quality control boards (Regional Water Boards). The regional water boards adopt and implement water quality control plans (Basin Plans) which recognize the unique characteristics of each region with regard to natural water quality, actual and potential beneficial uses, and water quality objectives to protect beneficial uses.

Executive Order W-59-93, signed by Governor Pete Wilson on August 23, 1993, established state policy guidelines for wetlands conservation. The primary goal of this policy is to ensure no overall net loss and to achieve a long-term net gain in the quantity, quality, and permanence of wetland acreage in California. The Executive Order declares that it is the policy of the State of California that *all* State programs and policies that affect the wetlands of California should be coordinated.

Problem with the Proposed Definition

The proposed rule text uses the Southern Forest District definition of Meadows and Wet Areas as the consolidated state-wide definition:

“Meadows and Wet Areas” means those areas which are moist on the surface throughout most of the year and/or support aquatic vegetation, grasses and forbs as their principal vegetative cover.

This definition is problematic in several ways:

- 1) The definition lacks temporal consistency. What may be “moist on the surface” during most of a year with average precipitation may not be moist on the surface during a year with significantly less precipitation. A timber harvesting plan developed during an abnormally dry year may not recognize, and therefore would not provide protection for, an area that may become “moist on the surface” during the operational life of the plan. This lack of consistency creates a problem for enforcement and an atmosphere of regulatory uncertainty;
- 2) The definition recognizes only those areas “which are moist on the surface throughout most of the year,” but not areas that may have continuous or recurrent saturation in the upper substrate;
- 3) The definition recognizes hydrophytes as the principal vegetative cover, but does not recognize the possibility of the lack of vegetation;
- 4) Having one definition for all other state programs and a separate definition unique to the Forest Practice Rules is by its nature inconsistent and counter to the goal of providing clarity. Additionally, separate definitions create regulatory uncertainty for the regulated public.

During Management Committee discussions, it was stated that no problem existed with the current definitions because of the relatively few violations issued with respect to wet

areas. While we are very glad to hear that, the problem is the current and proposed definition does not properly identify wet areas so that violations cannot be issued. It was also stated that foresters often go beyond the Forest Practice Rules when identifying wet areas. Again, while we are glad to hear this, we don't believe that is how regulation should operate. We believe regulations should be clear, consistent, and provide regulatory certainty, which is what the current definitions and the definition in the proposed rule plead lacks

Recommendations

In order to achieve the goals of clarity, consistency, and regulatory certainty and to comply with the policy stated in Executive Order W-59-93 that "all State government programs and policies that affect the wetlands of California be coordinated," We recommend that the definition of Wet Areas in Section 14 CCR 895.1 of the Forest Practice Rules should use the definition adopted by the California State and Regional Water Boards on April 2, 2019 after more than a decade of outreach, stakeholder review, vetting, and rigor:

"Wet Areas" mean those areas where, under normal conditions, (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area's vegetation is dominated by hydrophytes or the area lacks vegetation.

Please note that the State and Regional Water Boards' definition identifies three wetland characteristics that determine the presence of a wetland: wetland hydrology, hydric soils, and hydrophytic vegetation.

Sincerely,

Jonathan Warmerdam
Supervisor, Non-Point Source and Surface Water Protection Division

cc: Board of Forestry and Fire Protection Public Comment,
PublicComments@BOF.ca.gov
Eric Hedge, Board of Forestry and Fire Protection, Eric.Hedge@bof.ca.gov
Jane VanSusteren, Board of Forestry and Fire Protection,
Jane.VanSusteren@bof.ca.gov