

Board of Forestry and Fire Protection

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

“Meadows and Wet Areas, and Cutover Land Amendments, 2021”

Board of Forestry and Fire Protection

Title 14 of the California Code of Regulations

Division 1.5, Chapter 4,

Subchapters 1, 3, 4, 5, 6, and 7

Amend 14 CCR §§ 895.1, 906, 912.7 (932.7, 952.7), 912.9 (932.9, 952.9), 913.4 (933.4, 953.4), 916.3 (936.3, 956.3), 921.4, 961.4, 923.1 (943.1, 963.1), 923.4 (943.4, 963.4), 927.10, 953.7, 953.12, 1027.1, 1034, 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))

The rule text was adopted as noticed for 45 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 and modified through the formal public review and comment process.

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 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 Meadows and Wet Areas, and Cutover Land Amendments 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 (Matthew Reischman, Deputy Director Resource Management, CAL FIRE)

The California Department of Forestry and Fire Protection (CAL FIRE) supports the Board of Forestry and Fire Protection's (Board) adoption of the proposed rulemaking entitled, Meadows and Wet Areas, and Cutover Land Amendments, 2021. The proposed rulemaking would provide consistency and clarity in the definitions for "Meadows and Wet Areas", and "Wet Meadows and Other Wet Areas". It would also remove the inadvertent persistence of "Cutover Land" in the rules. By combining the definitions of "Meadows and Wet Areas", which are identical, and applying the same definition to all Forest Districts, consistency in application of the definitions will be achieved for the benefit of the regulated public statewide.

The proposed rulemaking would align terms used in the Forest Practice Rules with existing definitions and result in regulations that more accurately reflect those definitions. CAL FIRE supports continued application of the current definitions for “Meadows and Other Wet Areas” and “Wet Meadows and Other Wet Areas” because they are well-understood by the regulated public and Review Team agencies, and result in consistent protection of these features in harvesting plans. To date, there has been no evidence presented in the Board's Management Committee discussions of this topic that would indicate these features on the landscape are not being afforded adequate protection under the existing rules. CAL FIRE also endorses the minor revision of terms in the Aspen, Meadows, and Wet Areas Restoration special prescription and High Use Subdistrict rules. These revisions, however modest, would result in improved clarity and comprehension.

As is indicated in the Initial Statement of Reasons, the benefit of this rulemaking is improved clarity and consistency, and accurate reflection of terms defined by the Forest Practice Rules. There is no other problem to solve or purpose to achieve.

Thank you for the opportunity to comment on this rulemaking proposal and offer our support for its adoption by the Board. A representative from CAL FIRE will be at the hearing should any questions arise.

Response: The Board appreciates the support of the Department.

Rule Text Change: No

Comment W2 (Matthias St. John, Executive Officer, North Coast Regional Water Quality Control Board):

The Water Boards are very much in favor of consolidating for consistency the two different definitions of “Meadows and Wet Areas” and the definition of Wet Meadows and Other Wet Areas.” Having three definitions for essentially the same concept has contributed to confusion in the field.

In addition to internal consistency and clarification within the Forest Practice Rules, I believe this is an opportunity to provide inter-agency consistency, as well. I believe that to prevent confusion, it should be consistent with the definitions of the State and Regional Water Boards and to make sure it is fully consistent with the Water Code and Regional Water Quality Control Plans (Basin Plans).

The State Wetland Definition and Procedures for Discharges was adopted on April 2, 2019, and recently revised on April 6 of this year.

Looking at the proposed consolidated 895.1 definition “Meadows and Wet Area,” it is similar to the State and Regional Water Boards definition of Wetlands, but with some significant deficiencies.

The proposed unified Forest Practice Rules definition of "Meadows and Wet Areas" is:

“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.

The State and Regional Water Boards definition of Wetlands is:

The Water Boards define an area as wetland as follows: An area is wetland if, under normal circumstances, (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.

The two items that Board of Forestry’s proposed definition lacks are:

- 1) A specific definition of “moist on the surface throughout most of the year” (the State and Regional Water Boards definition uses "the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both"); and
- 2) "support aquatic vegetation, grasses and forbs as their principal vegetative cover" (the State and Regional Water Boards definition uses “vegetation is dominated by hydrophytes or the area lacks vegetation.”)

The State and Regional Water Boards recognize that timber operations are exempt from 401 permitting requirements, but timber operations are not exempt from adequately identifying and protecting wetland resources.

Response: The Board appreciates the support of the Water Boards for changes in definition clarity. The proposed action is an amendment of the Rules to clarify those definitions and apply them consistently throughout the State. The proposed action is not intended to address conformity between the State and Regional Water Boards definition of Wetlands, and such an amendment is outside the scope of the proposed action. The definition of “Meadows and Wet Areas” in the Forest Practice Rules does not match the State and Regional Water Boards definition of wetlands because it is not a definition of wetlands, and is indeed intended to include areas that do not meet the State and Regional Water Boards wetland definition requirements. The State and Regional Water Boards wetland definition requires that a site meet the requirements for hydrologic, soil, and vegetation to be classified as a wetland while the Forest Practice Rules definition of Meadows and Wet Areas requires either surface saturation or principle vegetative cover of grasses, forbs, or aquatic vegetation. Many forest meadows do not meet the standards for extended soil saturation (and the resulting soil characteristics) or dominance by hydrophytic plants.

Rule Text Change: No

Comment W3 (Alan Levine, Coast Action Group)

With this amendment, change, in the Rules language the Board seeks to apply wetland (wet area) language that is not consistent with other State Code and policy.

The justification for making such language change is for clarification and the elimination of confusion in the application of wetland protections. This justification is not logically consistent with State wetland policy, nor is it supported by any factual basis.

It has been pointed out to the Board (and Management Committee) that there are current existing definitions (derived by processes leading to adopted State Policy). Where these proposed Rule language changes are not consistent with the adopted State Policy. And where the authority of administration of the adopted State policy regarding wetlands is vested with and administered by the State and Regional Water Boards in consort with the Department of Fish and Wildlife.

It has been pointed out by the responsible Resource Agency(s) to the Board and Management Committee members that:

- Current wet area (wetland) definitions in the Forest Practice Rule are not consistent with the current State Policy and definitions applied throughout the State.
- The currently proposed Rules language defining wet areas (wetlands) is insufficient and not consistent with current State approved policy, definitions, and delineation criteria.
- Having one definition for all other State programs and a separate definition for timber harvest areas creates more confusion and uncertainty.
- The application of substandard rule language is a threat to wetland resources. It has been clearly pointed out by the responsible Resources Agency(s) why, in what areas, the proposed language fails to meet the criteria to adequately define (delineate) wet areas.
- The authority to define standards for wetland delineation does not rest with the Board of Forestry. Such authority and responsibility is vested with the Regional and State Water Boards and the California Department of Fish and Wildlife.
- It is State policy that State programs regarding wetlands be coordinated (consistent).

Finally, the Board decision to adopt this proposed Rule consisting of language that would define and manage wetland resources and a Final Statement of Reasons (functional equivalent CEQA document) cannot be supported as consistent with State Policy or be a less damaging application of Rules. Thus, this language cannot be adopted consistent with State Code. The Board of Forestry must develop language as wet area (wetland) definition that is coordinated with the responsible Resource Agency(s) and is consistent with State code.

Response: The proposed action is an amendment of Regulations to clarify definitions of Meadows and Wet Areas and apply them consistently throughout the State. The proposed action is not intended to address conformity between the State and Regional

Water Boards definition of Wetlands and the Forest Practice Rules definition of Meadows and Wet Areas, as the two terms are not analogous. As such, the recommended amendment is outside the scope of the proposed action. Further, Regional and State Waterboards participate in the review of all Timber Harvesting Plans through interagency review consistent with 14 CCR §§ 1037 *et seq.* and indeed coordinate on the review and protection of wetland resources for all Timber Harvesting Plans. The proposed action does not supersede or in any way interfere with the state or Regional Water Board enforcement of those laws and policies, including related definitions, over which they maintain authority and responsibility.

Rule Text Change: No

Comment W4 (191 public comments)

I write to oppose two upcoming proposed actions by the Board of Forestry (BoF). First, the BoF should not adopt its proposed definition of “Meadows and Wet Areas” and instead adopt the State and Regional Water Boards’ definition.

The proposed BoF definition does not adequately protect these areas because it fails to account for drought years – which we are seeing more and more of.

Additionally, the proposed BoF definition does not protect areas where the substrate is damp but the surface is not. The State and Regional Water Boards’ definition has already undergone considerable stakeholder review and is better equipped to protect these sensitive areas.

(The second action is unrelated to the current rulemaking)

Response: See response to Comment W2 and W3

Rule Text Change: No

Comment W5 (Johnathan Warmerdam, North Coast Regional Water Quality Control Board)

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.

Response: See response to Comment W2 and W3.

Rule Text Change: No

Comment W6 (matt Simmons, Environmental Protection Information Center)

On behalf of the Environmental Protection Information Center (EPIC) please accept the following comments regarding the Board of Forestry's (BoF) proposed new definition of "Meadows and Wet Areas" in the Forest Practice Rules. EPIC is a non-profit organization founded in 1977 with the mission of defending Northwest California's forests and wild places. EPIC and its members strongly believe that it is the responsibility of the State to protect our State's natural resources and that our environmental laws should be enforced to the hilt. Thank you for this opportunity to comment.

I. The Proposed Board of Forestry Definition Is Insufficient to Protect Sensitive Meadows and Wet Areas

The following is the proposed BoF 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 does not sufficiently protect these areas for three reasons. First, this definition does not account for the many recent drought years that have plagued California. Many areas that were once “moist on the surface throughout most of the year” have not been so for the past few years because of the drought. Because of this any definition of “Meadows and Wet Areas” must account for historic conditions and not merely measure current conditions. Otherwise, the definition will fail to protect areas that were historically moist and will helpful be again in the future.

Second, this definition does protect areas that are moist in the substrate soil. The definition specifically refers to areas that are “moist on the surface” but there are ecologically important areas that are not moist in the substrate soil but not moist on the surface soil. These areas would not be adequately protected under this definition.

Third, this definition does not adequately protect wet areas that lack vegetative cover. For example, a temporarily dried pond may lack vegetative cover but still deserves protection under this rule. For these reasons, we recommend that the Board of Forestry reject the proposed definition

II. A Sufficient Definition Already Exists and Is Used by the Rest of the State

The State and Regional Water Boards have already created a definition for “Wet Areas”. Here it is in full:

“Wet Areas” mean those areas where, under hydrologic conditions that are consistent with the long term precipitation record, (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.”

This definition addresses the three problems identified in the previous section with the Board of Forestry’s proposed definition. First, it refers to the long term precipitation record and therefore is not unfairly biased by our recent drought period. Second, it specifically refers to the upper substrate instead of the “surface” and therefore more effectively protects these areas. And third, it refers to areas that lack vegetation specifically as areas worthy of the definition if they meet the other two criteria.

As the State Agencies charged with defending our State’s water resources, the State and Regional Water Boards have considerable expertise in this area that should not be second guessed by the Board of Forestry in this instance.

Executive Order W-59-93 states that it is “the policy of the State of California that all State government programs and policies that affect the wetlands of California be

coordinated.” By choosing to ignore the State and Regional Water Boards, the Board of Forestry is actively choosing to diverge from established State policy.

The State and Regional Water Board’s definition was also developed through considerable outreach, review, and rigor that lends it more credibility than the Board of Forestry’s proposed definition. It does not make any sense for the Board of Forestry to adopt a weaker, less rigorous definition when the rest of California employs a stronger more rigorous definition.

In addition, adopting a different definition that the State and Regional Water Board’s definition will confuse State Policy. Having two different definitions with two distinctly different policy implications will make things more difficult for both regulators and landowners. Instead, the Board of Forestry should stick with State policy and choose a definition that is consistent with the current State and Regional Water Boards definition that is already in use throughout the State.

In order to avoid these problems, the Board of Forestry should simply adopt the definition suggested by the State and Regional Water Boards in Jonathan Warmerdam’s letter sent January 12, 2022.

III. BoF does not have authority to make rules that are not consistent with the authority of the State Water Board and State Policy for retention of wetlands - and - how wetlands are defined.

Current law vests the State and Regional Water Boards with sole authority to regulate and define California’s wetlands. California Water Code § 13140 states “The state [water] board shall formulate and adopt state policy for water quality control.” (California Water Code §13040) Federal administrative law (e.g., 40 CFR Part 122.2, revised December 22, 1993) defines wetlands as waters of the United States. National waters include waters of the State of California, defined by the Porter-Cologne Act as “any water, surface or underground, including saline waters, within the boundaries of the State” (California Water Code §13050[e]). Wetland water quality control is therefore clearly within the jurisdiction of the State Water Board and Regional Water Boards.

The Board of Forestry therefore cannot regulate wet areas in a way contrary to existing State Water Board policy as they propose to do here. Doing so would be in direct violation of the California Water Code.

IV. Conclusion

In conclusion, we urge the Board of Forestry and Fire Protection not to adopt their proposed definition. The definition is flawed, out of step with the rest of State policy, and violates State law. Instead, the Board of Forestry should adopt the definition suggested by Jonathan Warmerdam of the State Water Board in his letter to the board on January 12, 2022.

Response: The definition of “Meadows and Wet Areas” within the proposed action does not represent a departure from extant definition of the term, it is simply the clarification of applicability throughout all Forest Districts as defined within the rules. The Board is unaware of any impacts to wetlands or wetland resources resulting from the current definition of the term “Meadows and Wet Areas”, which is how the term has existed for multiple decades. The Board does not agree with the comment that the term or Forest Practice Rules provide insufficient environmental protection measures. Additionally, see response to comments W2 and W3.

Rule Text Change: No

<p>VERBAL COMMENTS AND RESPONSES RESULTING FROM PUBLIC HEARING CONDUCTED May 5, 2022</p>

Comment S1 (Dennis Hall, Assistant Deputy Director, Forest Practice, CALFIRE): The Department has submitted comments in writing. The Department appreciates the Board’s work with them on this topic. This rule packages addresses original narrower scope of the rulemaking. If the Board wants to expand the discussion to look at the protection of Meadows and Wet Areas in the future, the Department would support that. He has a monitoring crew and suggests that they might focus on the evaluation of and protection of those areas in the future.

Response: The Board appreciates the support of the Department.

Rule Text Change: No

Comment S-2 (Dave Fowler, North Coast Regional Water Quality Control Board): The NCRWQCB has submitted comment letter, fully support consolidating definitions, and agree that removing an obsolete term provides clarity. However, they believe that this should provide an opportunity to consolidate these terms, not just within the Forest Practice Rules, but within the State and Regional Water Boards definition of wetlands. This definition was worked out with many stakeholders, is used statewide, and is used for all state programs except forestry. This variance is inconsistent at least. It doesn’t provide the clarity and consistency that should be the goal of this rule package. This doesn’t provide regulatory certainty, the Governor’s policy of “no net loss of wetlands” says that all government programs that affect wetlands should coordinate. The proposed definition is not new, but neither is the State and Regional Water Boards definition. The Forest Practice Rules definition lacks consistency temporally because there are areas that are dry on the surface throughout the year during drought that still qualify as wetlands under the State and Regional Water Boards wetland definition. The Forest Practice Rules Meadows and Wet Areas definition doesn’t account for subsurface water. It also doesn’t recognize areas – like dried ponds – with no vegetative cover. During committee discussions CALFIRE stated that there were not many violations related to Meadows and Wet Areas so it’s not necessarily a problem, but if the wetlands haven’t been correctly identified, how can you know that it’s been

impacted. It was stated that RPFs go beyond the definition and that's a protective measure – but to depend on things done outside of regulation to meet the intent of regulation is not an effective process. To achieve the stated goals of clarity and consistency throughout the rules, we need consistency across programs – you don't want someone to believe that they've met the goals set forth by one program to find that they're in violation of another. Such a circumstance is not effective.

Response: See response to W2 and W3.

Rule Text Change: No

Comment S3 (Tim Ryan, Timberland Conservation and Fire Resiliency Program, CDFW): CDFW supports NCRWQCB letter as written. Briefly support the Water Board's comment letter and expresses support for consistency across agencies and ecological accuracy in the definition of these ecosystems across programs.

Response: See response to W2

Rule Text Change: No

Comment S4 (Cedric Twight, Sierra Pacific Industries:) SPI supports this draft, this plead and the proposed action. The proposal of the NCRWQCB will create additional regulatory processes and additional field and submission processes but will not provide additional protection of natural resources. Forest management is under stress from climate change, administrative burdens, and the costs of logging. Any regulatory action that tips the scales against logging and increases costs should be avoided at all costs.

The State and Regional Water Boards wetland definition is not applicable because

- 1.) In the definitions of waters of the state, Timber Harvest isn't covered under 401 permits due to an exemption. The Waters of the State require a 401 for timber harvest unless something's covered under a general order.
- 2.) Wetland delineation is a defined procedure that incurs training and costs. However, no impacts have been identified and brought to the board throughout the rulemaking process. The State and Regional Water Boards complain that wetlands will not be protected without this definition but there are many applicable laws for the protections of Meadows and Wet Areas: definitions in §895, Technical Rules Addenda 2 and 5, §§913.4(e), 921.5, 923.4, 936, 1034, 1038.2, 1038.4, and 1051. In addition, other agencies have right to pre-harvest inspections and they can dig soil pits during those inspections. The way that this is addressed in the Rules has not resulted in the loss of wetlands except for in the construction of roads and watercourse crossings.
- 3.) Wetland operations are expensive, require engineering, drainage facilities, and rock. For these reasons, they are avoided.

A forester's knowledge of the rules protects resources. Changing the definition will be expensive.

Response: The Board appreciates Sierra Pacific Industries' support for this regulation.

Rule Text Change: No

Comment S5 (Alan Levine, Coast Action Group): The current proposal opens a can of worms. One issue is that the current rules do not meet the current state standards. The trustee agencies (State and Regional Water Boards, CDFW) have requested relevant language and there's existing language requiring collaboration between agencies. He supports Chief Hall's statement of expanded discussion, and David Fowler's call for consistency of definition. The idea that any new language is not consistent with section 404 of the Clean Water Act doesn't apply, as the state can apply its own rules. Ratification of this regulation will be stepping outside of the law. The things referenced by the last speaker (Cedric) will not come to pass.

Response: See response to W3.

Rule Text Change: No

Comment S5 (Larry Hansen): He wants to advocate for the greatest protection of the wet areas. He has seen RPFs that are supposed to be trained in identifying them, but that don't always have the best qualifications for doing so. He's advocating for the best and highest level of protection for those habitats. The spokesman of the largest timber industry of California spoke, and his words indicated that they don't want any change in the way that they log. This comment tells you something about the message of whether we're protecting resources or allowing for expediency.

Response: See response to W3

Rule Text Change: No