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May 24, 2004

Joyce Young
Department of Fish and Game
830 S Street
Sacramento, CA 95814

Dear Joyce,

This letter is provided as public comment on the matter of the proposed amendments to Sections 699.5 of Title 14 of the California Code of Regulations (CCR) proposed by the Department of Fish and Game (DFG). This portion of the CCR deals with Lake and Streambed Alteration Agreements (Agreements). CLFA represents over 600 Registered Professional Foresters who constitute a vast library of knowledge in the sound management of the natural resources of our State. CLFA has discussed the increases proposed by your agency and as professional foresters we feel obligated to request that your agency address the concerns that were raised during our discussions.

Page 2 of the Initial Statement of Reasons (ISOR) for the proposed amendments states three changes to the fee schedule: (1) changing existing fee categories; (2) adding new fee categories and fees; (3) increasing the fees the Department currently charges applicants for agreements. CLFA is in support of changes (1) and (2) above as these are necessary to update the CCR to recently enacted legislation. However, we have several concerns over change (3) above, especially in regards to agreements for timber harvesting.

We are concerned that the economic impacts of the proposed fee increases have not been sufficiently addressed. In the addendum to Standard Form 399, Page three, Section A, Questions 3, 5, & 6 the response states,

“the Department estimates the proposed regulatory action will increase the total cost to a business that requires an agreement by approximately \$1,141, which could represent a significant increase for some businesses. However, the Department does not anticipate that such an increase will result in the creation or elimination of businesses and jobs, or the ability of California businesses to compete with businesses in other states”.

This statement does not seem to consider the fact that California Timberland owners are subjected to the most complex, costly, and stringent forest practice regulations in the United States, if not the world. A 340% increase in fees will definitely have a significant impact on California businesses and their ability to compete with out of state timber producers. As foresters we are concerned that these fee increases will add to the list of the economic disincentives currently levied against forest landowners in this state. These disincentives have profound and direct effects on how landowners manage their lands, often resulting in conversion of timberland to other uses. The supporting documentation for the proposed amendments to Sections 699.5

does not address the potential impact on the environment of increased timberland conversion resulting from increased fees.

We are also concerned that one of the primary arguments used to support the proposed fee increases is that no fee increases have occurred since March 24, 2000. The ISOR document for the proposed regulations correctly acknowledges that the purpose of fees is to cover the costs of the administration and enforcement of Fish and Game Code Sections 1600-1616. The ISOR also justifies the determination of the estimated costs to businesses that the proposed fee increases represent. However, we could find no information on how the estimate of the costs of administration and enforcement of Codes 1600-1616 was developed. This is important information since the fees are supposed to cover such costs.

Timber harvesting activities have some unique circumstances in terms of costs of administration and enforcement. For example, DFG collects an \$850 fee for review of each timber harvest plan (THP) submitted to the California Department of Forestry and Fire Protection. In addition, recently enacted legislation merges the Lake and Streambed Alteration process and the THP process. Concurrent with this merging, we are aware that DFG is making efforts to train the staff who review THPs in Lake and Streambed Alteration Agreements so that such staff can complete THP review and Agreement review concurrently. This merging process is still in its infancy so we are concerned that actual costs of administration and enforcement cannot accurately be determined until the process has had some time to be implemented. If the costs cannot be determined accurately, then it follows that accurate fees cannot be developed. In addition, time is needed to determine how much of the \$850 fee overlaps into Agreement administration costs. The fee increases within proposed section 699.5(c) do not appear to consider the unique circumstances of timber harvesting activities outlined above. Finally, in terms of cost recovery, the fee increases within proposed section 699.5(c) are counter-intuitive since the fees per activity increase as more activities are proposed. Given that there are fixed costs associated with reviewing Agreements, these costs should be reduced as more crossings are proposed.

By requiring increased fees, DFG will reduce money from project budgets. In a timber harvesting scenario, this directly equates to less money available for stream restoration work, off site road mitigation, legacy road treatments, etc. From a resource protection standpoint it would seem more prudent to direct funds at protecting, maintaining, and enhancing habitat for species under the protection of DFG.

The DFG has not analyzed alternatives to fee increases. Standard Form 399 Section D, #4 states,

“4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?”

The response contained in the addendum does not adequately address the question. The DFG has based the need for fee increases on the cost of enforcing 1600-1616 code but has not explained why the cost of enforcing 1600-1616 codes have gone up an average of 340% when the basic program has essentially remained unchanged. DFG is required to examine the methods used to enforce the 1600-1616 codes. As a result of such an examination perhaps such drastic fee increases would not be necessary.

In conclusion, as part of the public comment period for the proposed fee increases we formally request DFG to address our concerns as discussed above. Furthermore, we ask that DFG amend Section 699.5 of Title 14 to restructure the fee schedule to the recently enacted legislation. However, with regards to the fee increases within section (c) of the proposed amendments, we ask that DFG revise the fee schedule to the current regulations (subsection (e) of 14 CCR 699.5) until the legislatively revised process for timber harvesting Agreements is fully implemented on the ground. This will help DFG more accurately determine the actual costs of administering and enforcing Agreements prior to establishing fees.

Please consider these comments on behalf of our members who represent the majority of the professional expertise used to enforce and comply with our State's Forest Practice Regulations.

Sincerely yours,

Chris Quirnbach RPF #2623
President, California Licensed Foresters Association

The California Licensed Foresters Association, with approximately 750 members, represents the common interests of Registered Professional Foresters in the State of California. The Association provides opportunities for continuing education and public outreach to its membership, which includes diverse professionals affiliated with public agencies, private timber companies, consultants and the academic community. Governed by an elected Board of Directors, CLFA was established in 1980 after the passage of the landmark California Professional Foresters Law.