BOARD OF FORESTRY AND FIRE PROTECTION
PROFESSIONAL FORESTERS REGISTRATION

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MEMORANDUM

Date: September 23, 2008

From: Eric Huff, Executive Officer – Foresters Registration

To: Ken Zimmerman, Chair – Range Management Advisory Committee

Subject: Certified Rangeland Manager Program.

As you know, there has been considerable discussion regarding the application of the regulations governing the Board's Certified Rangeland Manager (CRM) Program. I have reported on this subject to your Committee on several occasions and attempted to provide clarity in response to the questions posed by the RMAC membership. What follows is my further attempt to provide a more complete picture of how the Program came to be and for what purpose. The information supplied here is entirely excerpted from the Board's record of rulemaking files, correspondence, statutory history, and historical references like Ed Martin's, A Tale of Two Certificates: The California Forest Practice Program, 1976-1988.

The Professional Foresters Law, hereafter "PFL," (Public Resources Code §750, *et seq.*) as it exists today is the result of statutory modifications by two pieces of legislation that became effective in the early 1990's. Assembly Bill 1903 (Hauser) was sponsored by the Board and became effective January 1, 1992. AB 1903 appears to have been at least partially prompted by two important documents found in the Board's Official Rulemaking File for the CRM Regulation (Appendix Item 1). The first of these was produced by what was then identified as the Department of Forestry and Fire Protection's Forest and Rangeland Resources Assessment Program (FRRAP--now known as the Fire and Resource Assessment Program or "FRAP") and is entitled, "A Policy Statement to Address Growing Conflict Over Changing Uses on California's Forests and Rangelands 1990-1995, FRRAP, January 1990." Chapter 3, Pages 14 and 15 of this document contains a discussion entitled, "Clarification of Roles of Professionals" and notes among other things, that, "[The] rapid urbanization of wildlands is complicating the roles of various professionals and the need for professional accountability." The author(s) further observed that the PFL was set up to function much like General Building Contractors Law in that, "…one professional is ultimately responsible and coordinates input or work products from other important disciplines."

The FRRAP Report's brief discussion concludes with four "Action Items" as follows:

- **The Board through regulation should clarify undefined terms in the law, and list tasks requiring, or not requiring, a license. The Attorney General's opinion on a number of licensing questions, when received, should be incorporated. Regulations will be based on historical documents, consistent with the existing lead role of the professional forester and discussions with other natural resource professionals.**

- **Evaluate whether or specialty professional certificates are now warranted. Alternatives may be possible within Board authority to allow other resource professionals to take on responsibility and accountability for specific tasks.**

- **Evaluate suggested changes in the professional examination process and content.**

- **Evaluate the desirability of law changes to raise some fee limits to allow coverage of costs in ongoing and predicted disciplinary cases; cost recovery of disciplinary action for persons found guilty by the Board; inclusion of public members other than Board members in the composition of the PFEC; and the PFEC's role in the disciplinary process.**

The last three bulleted items clearly illustrate that consideration of changes to the PFL to allow for specialty certificates among other things was being contemplated prior to publication of the FRRAP document in 1990. The first bullet indicates that the Board was consulting with the Attorney General's Office in an attempt to better define the PFL's lawful application. Not surprisingly then, the second document framing the Board's consideration of possible changes to the PFL is Deputy Attorney General, Bill Cunningham's apparently anticipated memorandum to the Chairman of the Board of Forestry (Board), dated May 2, 1990 (note that this memo is included herein as part of the Rulemaking File, Appendix Item 1). In this memorandum, Mr. Cunningham provides an analysis of the term "wildlands" for the purpose of helping delimit, "…the geographic scope of a professional forester's role." Cunningham states in the memo that, "[i]n adopting the Professional Foresters Law, the Legislature seems to have adopted the broadest generic term for the resource or resources to be protected." He goes on to state that the term "wildlands" appears to be a "composite term" for grasslands, brushlands, and timberlands. Cunningham then suggests that the Board consider defining the term "wildlands" in regulation or otherwise ask the Legislature for additional guidance. He concludes that until such time as further clarity is achieved, the PFL will require a licensed professional where activities may impact the state's "wildlands." But, he is also careful to add a caveat in the final line to the effect that, "…specific consideration of which specific acts on which specific lands requires a professional forester should await a case-by-case discussion."

Less than two months after the release of Mr. Cunningham's memorandum, former licensing officer, the late Bob Willhite sent a memorandum to Bob Kerstiens who was then serving as the Board's representative to the PFEC (Appendix Item 4). In that memo, Mr. Willhite summarizes the suggestion of former PFEC Chair and Board Member, Bob Heald that the Board create two (2) new certified specialties through amendment of existing regulation. The two specialties initially proposed by Mr. Heald were the "Certified THP Specialist" and the "Certified Hardwood-Range Specialist." As envisioned then, certified specialties would only be granted to those who first passed the RPF examination. Because the prospective certified specialist would already be an RPF, testing for the specialties would then be focused entirely upon the subject matter of the specialty. Those seeking the additional "Certified THP Specialist" designation would be tested on their knowledge of the state's forest practice act and regulations. Prospective "Certified Hardwood-Range Specialists" would likewise be tested on their knowledge of the hardwood-range vegetation type and its management. Notably, Mr. Willhite's memo identifies a need to engage with the range-livestock community to expand upon the questions included in the examination for this proposed specialty.

The subsequent proposed rule language for creation of the aforementioned specialties was provided in a document entitled, "Discussion Draft for Regulations to Create a Certified Range Specialist, December 6, 1990" (Appendix Item 5). As previously indicated, this initial regulatory proposal specified that a person could only be certified in a specialty once they had passed the RPF exam. Perhaps more importantly, the draft language also identified the specific vegetation types applicable to the hardwood-range specialty as well as those not applicable.

The applicable vegetation types included pinyon-juniper and juniper, all hardwood cover types (including eucalyptus), shrub cover types such as chaparral, and herbaceous cover types such as

annual and perennial grasslands so long as the shrub and/or herbaceous cover is associated with trees and other woody plants. The not-applicable vegetation types included "fresh emergent wetland," Joshua tree, desert scrub, pasture, "food producing cropland or orchard-vineyard," and of course urban landscapes. The "Discussion Draft" also provided new definitions of "timber," "wildland," and "urban development" that would have greatly clarified the application of the original PFL and the subsequent specialty proposals.

It would appear that both Willhite and Heald were of the initial belief that these proposed specialties could be created through existing regulation. Somewhere along the line, the Board must have been advised that further statutory authorization would be required because it sponsored AB 1903 and its authorization for the Board's creation of specialty certifications in "one or more fields of forestry" (Public Resources Code §772). The bill set forth that the Board could create certified specialty programs of its own devising or more simply adopt another public agency's or professional society's independent certification program. The latter approach is of course how the state's CRM program came into existence.

In March of 1992, two months after AB 1903 took effect, the California-Pacific Section of the Society for Range Management (Cal-Pac SRM) notified the Board of its intention to pursue specialty certification for range managers. The Board was provided with a draft set of requirements and remanded review of the proposal to the Professional Foresters Examining Committee (PFEC). The PFEC publicly evaluated the proposal at meetings in July, August and September of 1992. Upon completion of the PFEC's review and drafting of proposed enacting regulations, the Board scheduled its first hearing on the proposed regulations for June 9, 1993. Subsequent hearings occurred at the Board's August and September meetings with eventual adoption of the first and only certified specialty on January 5, 1994. The proposal was ultimately supported by the Society for Range Management, California Licensed Foresters Association, California Cattlemen's Association, and most importantly, the Range Management Advisory Committee. Both the California Farm Bureau Federation and Society of American Foresters declined to offer a position at the final hearing. In the final vote, only Member Tharon O'Dell chose to voice his opposition.

Meanwhile, in March of 1993, apparently concurrent with the PFEC's drafting and review of the proposed CRM Program regulations, a coalition of at least 50 individuals and organizations led by the Planning and Conservation League took issue with the Board's new found authority to create certified specialties as well as the continued application of the PFL to "wildlands." Senate Bill 1094 (Killea) (Appendix Item 2) was the result of this organized opposition and it proposed restriction of the Board's authority to certify other specialties in the fields of botany, biology, hydrology, geology, and ecological/stream restoration. Perhaps more importantly, SB 1094 sought to eliminate reference to "wildlands" in favor of the more confining definition of "forested landscapes."[1] Simultaneous to their legislative effort, members of the coalition and other supporters from the California Association of Professional Scientists, the American Fisheries Society, and the California Chapter of the Society for Ecological Restoration among others expressed consistent opposition to the CRM specialty certificate proposal throughout the lengthy public review process.

Despite opposition to SB 1094 expressed by the Board, the California Forestry Association, the California Licensed Foresters Association, the Northern California Society of American Foresters, the Association of Consulting Foresters and others, the bill was signed into law in October of 1993 and became effective January 1, 1994, just four days prior to the Board's adoption the CRM specialty. It must have been clear to the Board that passage of SB 1094 was imminent, as the definition of "forested landscapes" was incorporated in the CRM regulatory proposal prior to the Board's final consideration of it at the January 5, 1994 meeting.

Perhaps the greatest negative consequence of SB 1094's passage to the proposed CRM specialty was the immediate restriction of the law's geographic area of application as a result of the change

[1] AB 1127 (Campbell, 1991 Legislative Session) was an earlier unsuccessful attempt to adjust the geographic application of the PFL by simply eliminating reference to "wildlands."

from “wildlands” to “forested landscapes.” While it is no stretch to consider range and rangelands as a key part of the state’s “wildlands,” it is not so easy to connect range and rangelands to “forested landscapes.” Indeed, the August 1993 Board Meeting Minutes reveal that even prior to adoption of the CRM specialty, RMAC had expressed concern about the effect of the “forested landscapes” definition upon the proposed CRM regulation. Here again a common awareness of the pending passage of SB 1094 is apparent. It was RMAC’s concern that led to postponement of the final adoption hearing from August and September 1993 to January 1994. And, it seems highly probable that this severe limit on the program’s boundary and overall utility is the primary reason why the total number of CRMs remains so few today. Regardless, it is clear that the proponents of the specialty were aware of the limitation imposed by the “forested landscapes” definition when they voiced their support for the Board’s adoption of the program.

My original hypothesis about the adoption of the CRM specialty was that commercial timber interests had assisted in moving it forward with the idea that it would provide some level of benefit to the discussion of hardwood regulation. In the 1980’s, the Board focused quite a bit of attention to the issues surrounding hardwood conversion, stocking levels, and management. According to Ed Martin’s aforementioned publication, a “Hardwood Study Committee” was appointed by the Board in October of 1982 and produced a report in December of that same year. Shortly thereafter, the Board appointed a “Hardwood Task Force” to continue the work of the Study Committee and it completed a preliminary report in December 1983. Between December 1983 and February 1987, the Board continued to deliberate over possible hardwood regulation, holding the first ever California “Hardwood Symposium” in November 1986. The end result of this lengthy effort was the Board’s adoption of a resolution calling for increased educational efforts by agencies and other interested parties, and rejecting specific regulation of hardwoods. Of course, as RMAC is well aware, the question of hardwood regulation did not stop there and has continued to be publicly debated ever since.

It is clear that former PFEC Chair and Board Member Bob Heald originally intended the hardwood-range specialty to be focused upon management and treatment of hardwood vegetation types in particular. This suggests that there was a link between the hardwood regulation issue and the certified specialty concept. However, the extent to which this objective was carried forward in the ultimate adoption of the CRM specialty is not clear. Particularly since the educational requirements for CRM qualification are exclusively focused upon range and rangelands, and the requirement for licensure as an RPF prior to certification in a specialty was not adopted.

There may well have been an early link between the issue of hardwood regulation and the CRM Program. However, conversations with former Board staffers and CLFA representatives did not conclusively corroborate this observation. Further, the Board’s final adoption of the CRM specialty did not include specific reference to CRMs as hardwood tree specialists. The fact that a CRM is not also required to be an RPF also seems to indicate that CRMs were not intended to be the “hardwood-range specialists” originally envisioned by Mr. Heald. The CLFA representative who spoke in support of the CRM regulation indicated that the organization felt it should support the PFL’s allowance for specialties, and all those who would choose to be equally bound by the PFL.

Upon review of the program’s history, it appears that the primary issue affecting the CRM Program has remained the same since its adoption. Certified Rangeland Managers are bound by the “forested landscapes” definition same as Registered Professional Foresters. Just as a foresters license is required for the practice of forestry on non-federal, private and state forested landscapes, so too is a rangeland manager specialty certificate required for the practice of range and rangeland management on that same defined landscape. Deputy Attorney General, Shana Bagley’s recent analysis, dated August 4, 2008 (Appendix Item 3) affirms this fact.
What is also clear from Ms. Bagley's analysis is that the geographic area in which there exists a legal requirement for practice by a CRM cannot be expanded from the 'forested landscape.' Though the Board encourages the work of CRMs on other non-forested landscapes, the Board can only enforce the requirement for CRM involvement on a forested landscape.

The role of CRMs in the "forested landscape" is not particularly easy to grasp when you consider that the regulation itself refers to CRMs as providing services in the "…art and science of managing rangelands and range." (14 CCR §1651(a)). Further, as Ms. Bagley notes on page 4 of her analysis, there are existing definitions of "rangeland" found in the California Code of Regulations and the Public Resources Code, respectively. If CRMs are supposed to practice the art and science of range and rangeland management, how can they be bound by the "forested landscape" definition? The answer is that the Professional Foresters Law is what authorized the creation of this certified specialty. The CRM concept arose at a period of time in which the PFL applied to a much broader geographic area: the "wildlands." It seems clear that the original intent was that the specialty be applicable to rangeland vegetation types regardless of the existence of tree canopy. However, SB 1094 came along and changed the application of the PFL to prevent the Board's expression of authority over the broader "wildlands." The CRM Program undoubtedly suffered the most as a result, though the foresters licensing program has also endured the effects.

The current draft "Board Policy Number 12: Guidance on the Certified Rangeland Manager Program" as it has been most recently revised by representatives of Cal-Pac SRM appears to stay within the bounds of the Board's authority. I encourage the members of RMAC to continue working with Cal-Pac SRM representatives in the review and possible revision of this document with the goal of presenting it to the Board before the arrival of the New Year. I have likewise encouraged Cal-Pac SRM representatives to consider revising the program's qualification guidelines to allow for exam qualification of practitioners without the currently required undergraduate education. Both of these important steps seem worthwhile from the perspective of encouraging more folks to consider taking on the responsibility of the Board's specialty certification. I look forward to continuing my work with RMAC and Cal-Pac SRM on this subject and appreciate the opportunity to provide this limited historical background for our collective benefit.