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July 15, 2011

TO: Forest Practices Board

FROM: Kelly Susewind, P.E., P.G.
Water Quality Program Manager

SUBJECT: Quarterly Update Clean Water Act Milestones

Ecology committed to provide the Forest Practices Board with quarterly updates on the progress being made to meet milestones established for retaining the Clean Water Act (CWA) Assurances for the forest practices rules and associated programs. Having heard from the Board Chair that this is perhaps too many updates, Ecology will provide semiannual updates from this point forward. Our next update will be in advance of your February 2012 meeting.

This current update is particularly important because it includes changes to the milestones. As shown in the enclosed tables, Ecology has made changes to specific milestones that reflect reprioritization decisions consistent with the intent of the original 2009 list of milestones. Even with these changes, a significant number of milestones remain overdue.

No non-research program milestones were completed over the past six months. Several of these non-project milestones appear particularly problematic to complete. These are: 1) obtaining an independent review of the Adaptive Management Program, 2) developing a training and certification program for cooperators, and 3) assessing the condition of small forest landowner roads. Only one CMER research milestone was completed over the past six months. The biggest threats to meeting the CMER research milestones are the lack of funding and volunteer research capacity to design and carry out the needed research.

Ecology understands the economic recession has made it more difficult to meet some CWA milestones. We have been accommodating delays related to over-allocated staff. Ecology has also tried to reduce the effort needed to meet the milestones by proposing draft approaches for meeting the milestones, finding grant funding, moving milestone dates to match new consensus decisions, and remaining open to alternatives to specific milestones where they meet their underlying purpose. However, many of the missing milestones have no clear connection to the reduction in revenue. Missed milestones continue to be the result of prioritization decisions and processes that simply conflict with getting the milestones accomplished. Efforts during this past year, for example, have been heavily focused on accomplishing new issues brought forward by stakeholders instead of working on adaptive management program priorities.

Enclosed is a table showing all of the CWA milestones and summarizing their current status. Please contact Mark Hicks of my staff if you have any questions or concerns (360-407-6477; mhic461@ecy.wa.gov.)

Enclosure

Summary of CWA Assurances Milestones and current status:

Non-CMER Project Milestones		
	Summarized Description of Milestone	**Status as of July 2011**
2009	July 2009: CMER budget and work plan will reflect CWA priorities.	**Completed**
	September 2009: Identify a strategy to secure stable, adequate, long-term funding for the AMP.	**Completed** Strategy has been unsuccessful in securing long-term funding.
	October 2009: Complete Charter for the Compliance Monitoring Stakeholder Guidance Committee	**Completed**
	December 2009: Initiate a process for flagging CMER projects that are having trouble with their design or implementation.	**Completed**
	December 2009: Compliance Monitoring Program to develop plans and timelines for assessing compliance with rule elements such as water typing, shade, wetlands, haul roads and channel migration zones.	**Completed**
	December 2009: Evaluate the existing process for resolving field disputes and identify improvements that can be made within existing statutory authorities and review times.	**Completed**
	December 2009: Complete training sessions on the AMP protocols and standards for CMER, and Policy and offer to provide this training to the Board. Identify and implement changes to improve performance or clarity at the soonest practical time.	**Partially Met** Training occurred, and is planned to be repeated periodically for Board members. CMER is using results to refine its protocols and standards manual. Policy has added its issues to its work list.
2010	January 2010: Ensure opportunities during regional RMAP annual reviews to obtain input from Ecology, WDFW, and tribes on road work priorities.	**Expected Fall 2011** DNR notified regions of need to enhance involvement in 2010. DNR is now addressing this issue through modification in the Board Manual as well as through regional performance measures aimed at enhancing stakeholder involvement.
	February 2010: Develop a prioritization strategy for water type modification review.	**Completed**
	March 2010: Establish online guidance that clarifies existing policies and procedures pertaining to water typing.	**Expected Fall 2011** DNR mangement waiting for the time needed to refine the staff draft and expects to complete this by the Fall 2011.
	June 2010: Review existing procedures and recommended any improvements needed to effectively track compliance at the individual landowner level.	**Completed**

Non-CMER Project Milestones		
	Summarized Description of Milestone	**Status as of July 2011**
	June 2010: Establish a framework for certification and refresher courses for all participants responsible for regulatory or CMP assessments.	**Not Met** DNR wants dedicated funding to meet this milestone. Generally, DNR has reduced its training program; however, they are still doing internal DNR staff training on key issues, participating in the contract logger training program, and initiating an enhanced CMZ training program for staff and CMP cooperators.
	July 2010: Assess primary issues associated with riparian noncompliance (using the CMP data) and formulate a program of training, guidance, and enforcement believed capable of substantially increasing the compliance rate.	**Partially Met** DNR has not responded to Ecology's request to describe their strategy for identifying and remedying the causes of non-compliance.
	July 2010: Develop a plan for evaluating the risk posed by SFL roads for the delivery of sediment to waters of the state.	**Not Met** Ecology provided a draft approach to meeting this milestone using existing staff. DNR did not concur with the approach and wants new funding dedicated to addressing this milestone.
	July 2010: Develop a strategy to examine the effectiveness of the Type N rules in protecting water quality at the soonest possible time that includes: a) Rank and fund Type N studies as highest priorities for research, b) Resolve issue with identifying the uppermost point of perennial flow by July 2012, and c) Complete a comprehensive literature review examining effect of buffering headwater streams by September 2012.	**Not Met** Ecology provided draft strategy, and worked to get EPA to fund a literature review. Strategy has not be finalized or reviewed by Policy. Issue a) was met under a separate milestone. DNR has no plans to address Item b). However, an Ecology, WDFW, and DNR staff survey suggests generally good confidence exists in setting the uppermost points of perennial flow. EPA hired a consultant to complete Item c) but in the end was not able to accept their product due to a lack of synthesis information.
	October 2010: Conduct an initial assessment of trends in compliance and enforcement actions taken at the individual landowner level.	**Completed**

Non-CMER Project Milestones		
	Summarized Description of Milestone	**Status as of July 2011**
	October 2010: Design a sampling plan to gather baseline information sufficient to reasonably assess the success of alternate plan process.	**Partially Met** DNR developed an informal process for deciding what will be sampled, by whom, when, and for how long. No plans established for summarizing the results into an assessment of the program. The proposed approach would provide some useful information but does not meet either the letter or intent of the milestone. Ecology is open to any alternative approach that meets the underlining intent of this milestone to validate the AP process provides comparable protection as the standard rules.
	December 2010: Initiate process of obtaining an independent review of the Adaptive Management Program.	**Not Met** There is broad support for this review, but the state auditor's office dropped its plans to begin a review in FY 2012 and it will be an expensive and lengthy process to contract this milestone to a private firm.
2011	December 2011: Complete an evaluation of the relative success of the water type change review strategy.	**Uncertain** Reassigned DNR staff that developed the new strategy, and old problems are re-emerging in the regions as staffing levels decline.
	December 2011: Provide more complete summary information on progress of industrial landowner RMAPs.	**Expected Fall 2011** Ecology would consider the proposed improvements that come from the planned changes in the RMAP rules, the board manual, and in associated submittal forms to meet this milestone. The improved process is scheduled for review by the Board in August 2011.
2012	October 2012: Reassess if the procedures being used to track enforcement actions at the individual land owner's level provides sufficient information to potentially remove assurances or otherwise take corrective action.	**On-Track**
	Initiate a program to assess compliance with the Unstable Slopes rules.	**Uncertain** This is a new milestone and was agreed to by DNR. However, it is not know if DNR Operations has begun considering what will be needed to conduct the evaluation.

Non-CMER Project Milestones		
	Summarized Description of Milestone	**Status as of July 2011**
2013	November 2013: Prepare a summary report that assesses the progress of SFLs in bringing their roads into compliance with road best management practices, and any general risk to water quality posed by relying on the checklist RMAP process for SFLs.	**Unlikely to be Met** DNR wants dedicated funding and time is running out to design and implement a field review.

CMER Research Milestones		
	Description of Milestone	**Status as of July 2011**
2009	Complete: Hardwood Conversion – Temperature Case Study	**Completed** Study design did not allow for data analysis.
	Study Design: Wetland Mitigation Effectiveness	**Completed** Study later dropped due to unforeseen problems.
2010	Study Design: Type N Experimental in Incompetent Lithology	**Completed**
	Complete: Mass Wasting Prescription-Scale Monitoring	**Late but in Process** Study is in ISPR review.
	Scope: Mass Wasting Landscape-Scale Effectiveness	**Not Met** No work has occurred or is planned.
	Scope: Eastside Type N Effectiveness	**Not Met** CMER staff assigned June 2011 to help start this work.
	~~Implement: Wetland Mitigation Effectiveness (Pilot)~~	~~**Not Met**~~ Project dropped. Wetland program being redesigned. Ecology supported changes are reflected in this current list of milestones.
	~~Study Design: Testing the Accuracy of Unstable Landform Identification.~~	~~**Not Met**~~ Project Moved May 2011 to DNR Operations. Reassignment reflected in this current list of milestones.
2011	Complete: Solar Radiation/Effective Shade	**On-Track**
	Complete: Bull Trout Overlay Temperature	~~**On-Track**~~ **Unlikely** This ten year study was delayed due to contractor stopping work on final report to work on new contracts over the summer. May not be completed until Spring 2012.
	Implement: Type N Experimental in Incompetent Lithology	**On-Track** Need more landowner help getting study sites but appears sampling will begin Fall 2011.
	Study Design: Mass Wasting Landscape-Scale Effectiveness	**Unlikely** No work has occurred or is planned.
	~~Scope: Wetland Management Zone Effectiveness Monitoring~~	~~**Unlikely**~~ Wetland program being redesigned and this study's purpose will need to be built into future work.
2012	Complete: Buffer Integrity-Shade Effectiveness	**On-Track** Final report is in preparation.
	New project – Literature Synthesis: Forested Wetlands Literature Synthesis	**On-Track** Charter approved and contractor selected.
	New project - Scoping: Examine the effectiveness of the RILs in representing slopes at risk of mass wasting.	**Feasible** UPSAG plans to start work by Fall 2011.

CMER Research Milestones		
	Description of Milestone	**Status as of July 2011**
	Study Design: Eastside Type N Effectiveness	**Uncertain** Final study design was to be based on results from Eastside Type N Characterization Forest Hydrology Study, which is now to be delayed by another year.
	~~Complete: Wetland Mitigation Effectiveness~~	~~**Not Met**~~
	~~*Implement: Testing the Accuracy of Unstable Landform Identification*~~	~~**Unlikely**~~
	~~*Scope: Wetland/Stream Water Temperature Interactions*~~	~~**Uncertain – Change in Priority**~~ Wetland program being redesigned and this study's purpose will need to be built into future work.
	~~Study Design: Amphibians in Intermittent Streams (Phase III)~~	~~**Unlikely**~~ Moved until after Type N Experimental in Basalt Lithology completed in 2014. The Type N study appears positioned to address this research need.
2013	*New project* - Scoping: Forested Wetlands Effectiveness Study	**Uncertain** Scoping is to be informed by the Forested Wetlands Literature Synthesis, which should be in draft by Fall 2012 but may not be final until Spring 2013.
	New project - Wetlands Program Research Strategy	**Uncertain** A long-term research strategy is needed to replace the deleted wetland research milestones. The Forested Wetland Effectiveness Study is the first research priority, and the strategy should be informed by the Forested Wetlands Literature Synthesis. Replacement wetland research milestones will be set after reviewing the strategy.
	Scope: Effectiveness of RMAP Fixes	**Uncertain** Ecology is concerned UPSAG does not have the capacity to meet this scoping deadline and may need help. Ecology suggests RSAG; which appears to have both the capacity and expertise needed.
	New project - Study Design: *Examine the effectiveness of the RILs in representing slopes at risk of mass wasting.*	**Uncertain** Scoping work has not yet begun.

CMER Research Milestones		
	Description of Milestone	**Status as of July 2011**
	Implement: Eastside Type N Effectiveness	**Unlikely** Delay in completing the ongoing Eastside Type N Characterization Forest Hydrology Study will likely delay this study unless SAGE prepares a draft study design in advance of finalizing the Hydrology study.
	~~Scope: Wetland Hydrologic Connectivity~~	~~**Uncertain**~~ Wetland program being redesigned and this study's purpose will need to be built into future work.
	~~Implement: Amphibians in Intermittent Streams (Phase III)~~	~~**Unlikely**~~
2014	Complete: Type N Experimental in Basalt Lithology	**On-Track**
	Study Design: Effectiveness of RMAP Fixes	**Uncertain**
	Scope: Type F Experimental Buffer Treatment	**Uncertain**
	New project-Implementation: Examine the effectiveness of the RILs in representing slopes at risk of mass wasting	**Uncertain**
	New project – Study Design: Forested Wetlands Effectiveness Study	**Uncertain**
2015	Complete: First Cycle of Extensive Temperature Monitoring	**Feasible** Three of the four strata have been completed. Problems using the DNR hydro layer to find Type Np study streams on the eastside have delayed completion of the final strata.
	Scope: Watershed Scale Assess. of Cumulative Effects	**Uncertain**
	Moved out: Study Design: Amphibians in Intermittent Streams (Phase III)	**Uncertain** Project milestone exists only if needed to fill research gaps left from Type N Experimental in Basalt Lithology.
2017	Study design: Watershed Scale Assess. of Cumulative Effects	**Uncertain**
	Moved out: Study Design: Amphibians in Intermittent Streams (Phase III)	**Uncertain**
2018	Complete: Roads Sub-basin Effectiveness	**Uncertain** Ecology recognizes that RMAP programs implemented through DNR Forest Practices Operations may negate the need for this follow-up sample of progress in fixing roads.
	Implement: Watershed Scale Assess. of Cumulative Effects	**Uncertain**

CMER Research Milestones		
Description of Milestone		**Status as of July 2011**
	Complete: Type N Experimental in Incompetent Lithology	**On-Track**
2019	Complete: Eastside Type N Effectiveness (new study needed)	**Unlikely** SAGE may not be able to compensate for the current delay in initiating this project.