

1 **FOREST PRACTICES BOARD**
2 **REGULAR BOARD MEETING**
3 May 14, 2013
4 Natural Resources Building
5 Olympia, Washington
6

7 **Members Present**

- 8 Aaron Everett, Chair, Department of Natural Resources
9 Bill Little, Timber Products Union Representative
10 Bob Guenther, General Public Member/Small Forest Landowner
11 Carmen Smith, General Public Member/Independent Logging Contractor
12 Court Stanley, General Public Member
13 Dave Somers, Snohomish County Commissioner
14 David Herrera, General Public Member
15 David Whipple, Designee for Director, Department of Fish and Wildlife
16 Heather Ballash, Designee for Director, Department of Commerce
17 Kirk Cook, Designee for Director, Department of Agriculture
18 Paula Swedeen, General Public Member
19 Phil Davis, General Public Member
20 Tom Laurie, Designee for Director, Department of Ecology
21

22 **Staff**

- 23 Mary McDonald, Acting Forest Practices Division Manager
24 Marc Engel, Forest Practices Assistant Division Manager
25 Phil Ferester, Assistant Attorney General
26
27

28 **WELCOME AND INTRODUCTIONS**

29 Aaron Everett called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.
30

31 **APPROVAL OF MINUTES**

32 **MOTION:** Dave Somers moved the Forest Practices Board approve the February 12, 2013
33 meeting minutes.
34

35 **SECONDED:** Bob Guenther
36

37 **ACTION:** Motion passed unanimously.
38

39 **REPORT FROM CHAIR**

40 Aaron Everett thanked Mark Calhoon for his service on the Board and introduced Heather Ballash,
41 Department of Commerce’s new representative. Everett also gave an update on Forest Practices
42 Division projects, the start of special legislative session, and the agenda for the day.
43

44 **PUBLIC COMMENT**

45 Ken Miller, Washington Farm Forestry Association (WFFA), commented that disproportionate
46 impacts still exist for small forest landowners, alternate plans cannot be accomplished without help,
47 and a collaborative dialog with the legislature is needed. He suggested the current 20 acre riparian
48 buffer rule for small forest landowners as a starting point for discussion.

1 Rick Dunning, WFFA, commented there is a big divide over the Forests and Fish rules and
2 requested the Board contact Representative Blake in support of meeting with the legislature on the
3 principles of Forests and Fish.

4
5 Norm Schaaf, Merrill & Ring, expressed concerns about the Forest Practices compliance
6 monitoring report, specifically where anything less than 100% compliance of buffers and tree
7 counts is a failure. He requested the Board implement a more accurate system.

8
9 Chris Mendoza, Conservation Caucus, commented that having wrong buffers on the wrong streams
10 are the highest concern of the conservation caucus. He offered to assist DNR with its water typing
11 training.

12
13 Kevin Godbout, Weyerhaeuser, commented that their voluntary protection plan with WDFW for the
14 Taylor's checkerspot butterfly is nearly done and should be completed by the next Board meeting.
15 He noted that the TFW Policy Committee workload is a serious problem.

16
17 Peter Goldman, Washington Forest Law Center, commented that TFW Policy Committee's work on
18 Post Mortem and Type F waters has been a good collaborative process. He also said the
19 Conservation Caucus wants significant improvement in DNR's screening of potentially unstable
20 slopes in moderate to high hazard areas, and disagrees that all fish bearing and potentially fish
21 bearing waters under the Forest Practices Habitat Conservation Plan are being protected under the
22 interim water typing rule.

23 24 **STAFF REPORTS**

25 Northern Spotted Owl Implementation Team (NSOIT)

26 Andy Hayes and Lauren Burnes, DNR, explained NSOIT is exploring the applicability of
27 conservation banking, land trusts, and conservation easements to Washington's Northern spotted
28 owl protection efforts. They are also looking at adapting the U.S. Fish and Wildlife Service's
29 critical habitat modeling tool to Washington.

30 31 TFW Cultural Resources Roundtable (Roundtable)

32 Jeffrey Thomas, Puyallup Tribe of Indians and Karen Terwilleger, Washington Forest Protection
33 Association (WFPA), reported the Roundtable has distributed its 2013 survey and is working on
34 guidance for implementing the Board's Cultural Resources Protection and Management Plan.
35 Thomas said there is still no small forest landowner representation on the Roundtable and no dialog
36 with the Adaptive Management program, and improved communication is welcomed.

37
38 Everett noted, and the Board agreed with, the consolidation of the two Roundtable reporting
39 requirements, WAC 222-08-160 and WAC 222-20-120, into one annual report. The Board thanked
40 Thomas for his persistence with improving cultural resources protection and management.

41 42 Board Manual Development

43 Gretchen Robinson and Marc Ratcliff, DNR, noted updates to Section 22 *Guidelines for Adaptive*
44 *Management Program* will start in May-June and the new Section 5 *Forest Practices Hydraulic*
45 *Projects* (FPHP) is on the department's website for review. Robinson thanked stakeholders for their
46 respectful, patient participation.

47
48 There was no further discussion on the following staff reports:

- 1 • Adaptive Management
- 2 • Compliance Monitoring
- 3 • Rule Making Activity
- 4 • Small Forest Landowner Advisory Committee and Small Forest Landowner Office
- 5 • Upland Wildlife Working Group

6

7 **FOREST PRACTICES HYDRAULIC PROJECT BOARD MANUAL DEVELOPMENT**

8 Scott Rockwell, Stillaguamish Tribe, said the board manual stakeholder process was respectful,
 9 comprehensive, and efficient. He also noted that after the Board adopts the forest practices
 10 hydraulic (FPH) rules and approves the FPH section of the board manual that tribal consultation,
 11 multidisciplinary participation, and training will be key components to the successful
 12 implementation of the FPH rules.

13

14 Stephan Dillon, Hancock Natural Resource Group, said the input of all stakeholder participants
 15 resulted in practical plus environmental approaches in the board manual.

16

17 Don Nauer, Washington Department of Fish and Wildlife (WDFW), said it was not easy to mesh
 18 the more site-specific prescriptive nature of the WDFW hydraulic project rules into the more
 19 minimum standard (one-size-fits-all) nature of the forest practices rules, and noted collaboration in
 20 FPA pre-application planning is key to success.

21

22 The Board thanked the participants for their successful work.

23

24 **LEGISLATIVE ACTIVITY UPDATE**

25 Mary McDonald, DNR, reported that no legislative bills passed that affect the forest practices
 26 program, and provided an overview of the forest practices fiscal year 2013-2015 budget.

27

28 Everett noted the shifts in general fund-state monies due to Governor Inslee’s budget.

29

30 **PUBLIC COMMENT ON BOARD AND TFW POLICY ACCOMPLISHMENTS AND**
 31 **PRIORITIES**

32 Mark Teply, Washington Society of American Foresters (WSAF), introduced himself as WSAF’s
 33 monitor of the activities of the Board and offered WSAF as a resource to the Board.

34

35 **REVIEW OF BOARD AND TFW POLICY COMMITTEE’S WORK**
 36 **ACCOMPLISHMENTS AND PRIORITIES**

37 Marc Engel, DNR, recommended the Board update their 2013 Work Plan to:

- 38 • Change the completion dates to August 2013 for the:
 - 39 ○ Adaptive Management Program’s riparian and Type F/Eastside temperature study,
 - 40 ○ Roundtable’s annual report on WAC 222-20-120, and
 - 41 ○ Forest biomass rule making.
- 42 • Move the following to 2014:
 - 43 ○ WAC 222-16-080 rule making,
 - 44 ○ NSO critical habitat rule making, and
 - 45 ○ Board Manual Section 23, *Guidelines for Field Protocol Locate Mapped Divisions Between*
 46 *Stream Types and Perennial Stream Identification*. Specific guidance to locate the
 47 uppermost point of perennial flow.

1 Adrian Miller, Longview Timber Corporation, and Stephen Bernath, Department of Ecology,
2 reported Policy Committee consensus on the Type N Water strategy and acceptance of the mass
3 wasting effectiveness report. They noted work by the Policy Committee’s Type N subgroup
4 regarding the wet-season method for locating the uppermost point of perennial flow in Type Np
5 Waters and the Policy Committee’s Type F subgroup in the development of a charter, the success of
6 facilitated Policy Committee meetings, and the Policy Committee’s workload prioritization.

7
8 Paula Swedeen noted the August due date for the NSOIT recommendation to the Board.
9

10 Everett noted major progress on the Policy Committee’s five major projects and date specific
11 priorities, and WDFW and DNR’s work regarding the application of Appendix M of the Forests and
12 Fish Report in an Adaptive Management Program review of proposed WDFW draft rules amending
13 the Hydraulic Code.

14
15 **MOTION:** Tom Laurie moved the Forest Practices Board approve the 2013 Board Work Plan
16 as amended to include Forests and Fish Policy’s priorities as outlined in the draft
17 May 3, 2013 Workload document.
18

19 **SECONDED:** Bob Guenther
20

21 **AMENDMENT**

22 **TO MOTION:** Aaron Everett moved to amend the motion to add at the end “with the following
23 changes:

- 24 • Update the completion date for the NSOIT to August 2013;
- 25 • Add to the tasks, “TFW Policy Committee Work Plan Accomplishments and
26 Priorities”, at each regular meeting.”
27

28 **SECONDED:** Tom Laurie
29

30 **ACTION ON**

31 **AMENDMENT:** Motion passed unanimously.
32

33 **ACTION:** Motion passed unanimously.
34

35 **PUBLIC COMMENT ON ADAPTIVE MANAGEMENT REFORM AND FOREST**
36 **BIOMASS RULE MAKING**

37 Chris Mendoza, Conservation Caucus, commented on the need for a method to measure post-
38 harvest biomass on site and validation of the University of Washington’s sustainable supply studies.
39

40 Karen Terwilleger, WFPA, said WFPA supports the forest biomass and the adaptive management
41 reform rule makings moving to the public review process.
42

43 **RULE MAKING ON ADAPTIVE MANAGEMENT REFORM AND FOREST BIOMASS**
44

45 **MOTION:** Aaron Everett moved the Forest Practices Board approve for public review the
46 draft rule proposal amending WACs 222-12-045, 222-16-010 and 222-30-020.
47 These changes reflect the recommendations of the settlement agreement regarding
48 the Forest Practices Habitat Conservation Plan and the Forest Practices Biomass

1 Working Group. Everett further moved the Board direct staff to file a CR-102
2 with the Office of the Code Reviser to initiate permanent rule making.

3
4 **SECONDED:** Dave Somers

5
6 Board Discussion:

7 Tom Laurie said the Department of Ecology (DOE) supports the rule proposal.

8
9 **ACTION:** Motion passed unanimously.

10
11 **PUBLIC COMMENT FOR RULE MAKING ON FOREST PRACTICES HYDRAULIC**
12 **PROJECTS**

13 Stephen Bernath, DOE, supported full integration and moving from ordinary high water mark/line
14 to bankfull width. He said DOE is looking at the nexus between fords, hydraulic projects, and water
15 quality.

16
17 Norm Schaaf, Merrill & Ring, expressed concern about including Type N waters in the definition of
18 forest practices hydraulic project and using bankfull width, and also recommended relocating part
19 of the water crossing structures language to the board manual.

20
21 Peter Heide, WFPA, voiced concern about including Type N waters in the definition of forest
22 practices hydraulic project and using bankfull width, and recommended WDFW revision of the
23 hydraulic code rules include a separate section for HPAs on forest lands specific to the nexus with
24 Appendix M of the Forests and Fish Report.

25
26 Chris Mendoza, Conservation Caucus, noted concern about Type N waters that meet the physical
27 requirements of Type F Waters in the interim Water Typing rule and successful implementation of
28 the Water Type Modification Form concurrence process given submittal of these forms are not
29 required in WAC 222-30-020 (1) pre-application consultations.

30
31 Kevin Godbout, Weyerhaeuser, expressed concern about inclusion of Type N water crossing
32 structures as forest practices hydraulic projects and whether the Board has authority to adopt
33 bankfull width in the FPHP rule making instead of ordinary high water mark/line.

34
35 **RULE MAKING ON FOREST PRACTICES HYDRAULIC PROJECTS**

36 Marc Engel, DNR, briefed the Board on 2SSB 6406, and said the first two required steps of the
37 legislation have been completed: the WDFW rulemaking to include the WDFW concurrence
38 process in the Hydraulic Code and the Memorandum of Agreement between DNR and WDFW on
39 integration. Engel requested the Board to direct staff to file this rule proposal with the Office of the
40 Code Reviser to initiate rule making.

41
42 **MOTION:** Aaron Everett moved the Forest Practices Board approve for public review the
43 draft rule proposal amending Title 222 WAC that incorporate the hydraulic code
44 into the forest practices rules, with the following amendments:

- 45 • To include the proposed rule definition of “forest practices hydraulic project”,
46 as well as an alternate rule definition which excludes Type N Waters;

- 1 • To include the proposed rule definition of “bankfull width”, as well as an
2 additional rule definition of the term “ordinary high water mark/line” as
3 defined in the hydraulic code.

4 Everett further moved the Board direct staff to file a CR-102 with the Office of
5 the Code Reviser to initiate permanent rule making. It is the Board’s intention to
6 select a definition at final rule making.

7
8 **SECONDED:** Dave Somers

9
10 Board Discussion:

11 Aaron Everett said his intent was to proceed with rule making while fully considering the comments
12 received this morning and offering those options as part of the proposal for public review.

13
14 The Board discussed various ideas to clarify the proposed amendments to the motion.

15
16 Tom Laurie noted he wanted to hear clarifying testimony during the scheduled hearings.

17
18 **ACTION:** Motion passed. 11 support / 1 oppose (Little) / 1 abstention (Herrera)

19
20 **PUBLIC COMMENT**

21 Norm Schaaf, Merrill & Ring, noted that implementing bankfull width verses ordinary high water
22 mark and adding Type N waters in the forest practices hydraulic project rule making have
23 significant cost implications and questioned whether or not an economic analysis is required.

24
25 **PUBLIC COMMENT ON THE CMER 2014 WORK PLAN AND BUDGET**

26 None.

27
28 **CMER 2014 WORK PLAN AND BUDGET**

29 Jim Hotvedt, DNR, provided an overview of the work plan, summarized the budget, and requested
30 approval of the 2014 CMER work plan and budget.

31
32 Everett noted the Forests and Fish account numbers are fairly solid, and the Board should consider
33 whether to continue facilitation costs for the Forests and Fish Policy meetings, and the importance
34 of the CMER budget and work plan to the settlement agreement and implementing the Forests and
35 Fish Report.

36
37 **MOTION:** Aaron Everett moved the Forest Practices Board approve the 2014 CMER work
38 plan and budget.

39
40 **SECONDED:** Paula Swedeen

41
42 **ACTION:** Motion passed unanimously.

43
44 **PUBLIC COMMENT ON PETITION FOR RULE MAKING**

45 Adrian Miller, Longview Timber Corporation, commented in opposition to the petition noting the
46 current authority of DNR and WDFW can address the issue.

1 Rob Kavanaugh, Friends of the western gray squirrel and petitioner, commented that WDFW rules
2 are not clear on nest tree and habitat protection, that protection needs to be based on science, and
3 rule making to protect this species is needed.
4

5 Paula Swedeen asked whether better enforcement of existing regulations would suffice. Kavanaugh
6 said the rule only protects the nest tree which falls short of what a viable population needs.
7

8 **PETITION FOR RULE MAKING FROM ROB KAVANAUGH**

9 Marc Engel, DNR, explained the petition process noting receipt of the petition on April 15, 2013
10 and a maximum of 60 days for the Board to approve or deny the petition. Engel added the state
11 listed the Western gray squirrel as threatened in 1993 and the Board considered western gray
12 squirrel rule making in 1996. After an EIS analysis, comments from public hearings, and
13 recommendation from the TFW Landscape Committee, the Board chose voluntary protection via
14 application screening and further efforts on a landscape approach.
15

16 Gary Bell, WDFW, gave a PowerPoint presentation on the species history, ecology, and current
17 range, and explained the voluntary management process.
18

19 David Whipple explained that WDFW's current statutory authority only applies to nest tree
20 protection. He said an FPA slipping through the cracks is not the norm, WDFW does not think a
21 forest practices rule for nest trees is necessary, and committed WDFW to:

- 22 • continue to work with DNR in screening applications,
- 23 • examine modifications to its statute,
- 24 • create structured guidance for its regions, and
- 25 • reassess its regional staff work load.
26

27 **MOTION:** David Whipple moved that the Forest Practices Board deny the petition for rule
28 making dated April 11, 2013 to create a new Forest Practices rule similar to the
29 Washington Department of Fish and Wildlife RCW that would enable DNR staff to
30 protect the nest trees of the western gray squirrel.
31

32 Whipple further moved that the Board direct staff to work with the Department of
33 Fish and Wildlife to explore operational, administrative or other mechanisms to
34 increase the effectiveness of the current western gray squirrel voluntary protection
35 approach, and provide their findings to the Board at its November 2013 meeting.
36

37 **SECONDED:** Tom Laurie
38

39 Board Discussion:

40 Paula Swedeen requested the Board consider whether rule making is necessary after the results of
41 the November meeting and consider landscape planning approaches, and asked whether there
42 currently is conditioning authority. Engel replied DNR has conditioning authority given specific
43 situations.
44

45 Tom Laurie noted it would be helpful to know what a western gray squirrel rule might look like.
46

47 Dave Somers encouraged WDFW to consider a voluntary or regulatory process that looks at
48 landscape level habitat protection, and asked WDFW for clarification on their no-rule

1 recommendation. David Whipple replied that each situation is very site specific and flexibility
2 provides better opportunities for protection.

3
4 Phil Davis asked about the population trends and the nest tree buffer size. Bell replied the western
5 gray squirrel population is probably more widely distributed than we know and buffers are 50 foot
6 radius minimum, and noted the importance of connecting habitat corridors.

7
8 **ACTION:** Motion passed unanimously.

9
10 **EXECUTIVE SESSION**

11 Executive session was convened from 3:02 p.m. to 3:30 p.m.

12
13 Meeting adjourned at 3:30 p.m.