

From: [REDACTED]
To: [ANDERSON, PATRICIA \(DNR\)](#)
Subject: with attachment RE: General Public Testimony for 2/8/2023 Forest Practice Board meeting
Date: Sunday, February 5, 2023 3:29:32 PM
Attachments: [Low impact criteria Dispute settlement - Board approved 11 10 2022.pdf](#)

External Email

From: kenbonniemiller@[REDACTED]
Sent: Sunday, February 5, 2023 3:26 PM
To: PATRICIA ANDERSON <PATRICIA.ANDERSON@dnr.wa.gov>
Subject: General Public Testimony for 2/8/2023 Forest Practice Board meeting

Patricia:

Please forward this testimony to the FPB. This will be my first missed meeting in several years – didn't want anyone missing my contributions.

Ken

Chair Smith and members of the Board:

Subject: Helping your understanding of SFLO frustrations – “criteria for low impact” example

As a reminder: The SFL Advisory Committee spent 2 years **reaching a consensus** agreement on draft “criteria for low impact”; DNR rejected that initial draft resulting in another 2 years (maybe one, I forget 😞) reaching an alternative (perhaps better?) consensus recommendation in Policy for your consideration in early July; for apparent “process” reasons you were not allowed to consider the July Policy consensus agreement until November 10 this year; where you approved the July consensus unanimously (as I recall); the agreed upon recommendations included the last line on the attached (page 1 of 2 pages you approved): the last of 4 approval parameters was “The Board include the BM Sec. 21 amendment effort in the Board’s 2022 and 2023 Work Plans, with the intention of having recommendations to the Board by its February 2023 meeting.”

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To be honest I didn't really expect recommendations to be at the Board by your February 2023 meeting, but I fully expected to be giving you and my constituents regular updates by now. I'm hoping you can understand (with this single example) why there is an edginess to some of the communications you get from landowners that can't comprehend “government time” .

Marc and I are currently striving to get a diverse/competent stakeholder group selected. I also believe Marc has this effort scheduled for 1st (?) priority on this year's work plan. I personally know/appreciate that he still has way too much on his plate to meet everyone's needs. I also have every confidence that once the stakeholder group is formed and gets **his** more informed vision (that I share) on paper in a "straw dog" format a motivated group should be able to get that recommendation to you by your May **2023** Board meeting.

At your last of several November meetings, you might recall my ask of the Chair for a meeting with her and Marc to explore an idea of Marc's that needed a little support – support the Chair ultimately did provide to pursue the idea further. So rather than always seeming to be throwing rocks in DNR or Marc's direction I want to compliment him (& the Chair) for encouraging Policy to take up some earlier very collaborative and near consensus "experimental" prescriptions. It's my understanding these discussions will be in search of combining that good work with 75' buffers on an "experimental" or "Pilot rule" basis where a limited number of SFLOs would be required to follow some specific prescriptions to help achieve Desired Future Condition where these sites are heavily monitored for compliance and especially to help identify potential problems before recommending any more formal next steps, likely years from now. Again, we appreciate Marc's outreach and the level of regulatory risk he (and the Chair) may be taking with this potential pathway to win-win success in the field.

Thank you all for your service during these difficult times,

Ken



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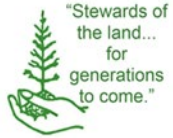
The discussion this morning on the complexity and process related to doing the work that is contemplated in CMER dovetails with many things I have been mulling these past few years. It also came up in the discussion our caucus had last week with Policy co-chairs on how to make the process we are in flow smoothly. My observation is that we are so tightly wound up in process and rules that we are missing the point of our efforts – which is to create conditions on the ground, or results, that improve conditions for all components of the resource – fish, water, wildlife, and timber. In other words, we are opting for process over results.

This issue has been explored in the scientific literature for at least the past 25 years – and we aren't taking heed here in Washington State. See especially *Holling C.S. and G.K. Meffe, 1996, Command and Control and the Pathology of Natural Resource Management, Conservation Biology, 10(2): 328-337*. This is reminiscent of how public policy decision makers and regulators have dealt with wildfire as a dominant element of our natural systems. We have been ignoring that for decades which has created the wildfire/forest health crisis we are currently in. My thesis is that we can expect similar results from our continued insistence on “command and control” mechanisms to address fish, water, and wildlife issues.

What I am saying now I've said before, most recently at the Feb 2022 board meeting.

Disputes, and bogging down into process, “are inevitable in a program that is process based, rather than results based. And the problem is not really a fault of the Adaptive Management Program as it is embedded in a forest practices regulatory framework that is process based, not results based. If we want to see outcomes that are favorable to the four pillars of the Forests and Fish agreement, then the entire system will need an overhaul to create a results based regulatory framework like they did in British Columbia nearly 2 decades ago after their failed attempt at prescription based forest practices rules.”

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We have already made our displeasure known on the unwillingness of other caucuses to look at alternate riparian strategies mimicking our westside template for the riparian characteristics and shade study, so I will leave that for now.

For the eastside study, I've made similar testimony in the past, but I think many of the board members are new since then, so I wanted to bring this to your attention again. As well as my activity here in the regulatory arena, I am also very active in the forest health realm. Thinking about activity in forest health, much of the energy is around wildfire resilience which is justified since it's probably safe to say that we are in an era of not 'if' but 'when' the fire will occur. To explore the interaction between eastern Washington rules and wildfire, several years ago the Washington Farm Forestry Association (WFFA) commissioned a scientific analysis using CMER datasets from the Bull Trout Overlay (BTO) monitoring effort and the Eastern Washington Type F Riparian Assessment Project (EWRAP). This was our due diligence as we were contemplating an alternate plan template for eastern Washington similar to the effort that you denied last meeting. Our analysis showed that for these representative riparian stands, mortality from wildfire ranges from 70-100% for over 80% of the riparian stand inventories if they are treated consistent with the current regulations. Moving these stands towards a 'fire-safe' trajectory requires thinning, and in many cases quite aggressive thinning. Simulated treatments that removed 10-30% of the original basal area of riparian stands with 100% mortality after fire, predicted that mortality would be reduced by 25-84% in the WFFA analysis.

The study results showed that thinning treatments to reduce stand density back to fire safe conditions will not be 'as good as' current rules to protect riparian functions in the absence of fire, but they will be substantially better than rule at maintaining critical functions when the fire does occur in nearly all instances. Recent history shows us that fires respect no artificial boundary we place in our forested systems whether it be an ownership boundary or a defined riparian zone. Therefore, it is prudent to look at these special sites and take steps to protect them as we do the rest of our forested property – through judicious thinning and subsequent treatments that sustain the remaining trees as vigorous components of a functioning ecosystem. In our view the original language and treatments proposed for the ENREP study design didn't go nearly far enough to address the risk to these sensitive sites.

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February 6, 2023

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Re: Pilot Rule Making, Water Typing System and Np Buffer Rule Making, Petition for Rule Making

Dear Forest Practices Board Members:

Washington Forest Protection Association (WFPA) is a forestry trade association representing large and small forest landowners and managers of four million acres of productive working forests, including timberland located in the coastal and inland regions of the state. Our members support rural and urban communities through the sustainable growth and harvest of timber and other forest products for U. S. and international markets. For more information about WFPA, please visit our website at www.wfpa.org. WFPA respectfully submits the following comments for the Forest Practices Board's (FPB) February 2023 meeting.

Pilot Rule Making

WFPA supports the pilot rule making requests for both the Western Washington Riparian Characteristics and Shade Response (RCS) Study and the Eastern Washington Np Buffer Effectiveness Project (ENREP). However, we would like to highlight a few issues and a potential opportunity related to these projects.

The pilot rule request for the RCS study is unlike prior pilot rule requests in that study sites have not yet been selected. All prior pilot rule requests, and the current request for ENREP, have been associated with a specific site and treatment applied to that site. The RCS pilot rule request description contains a potential pool of sites from which 10 will be selected, presumably five being treated this and five next year, although the description is not clear in that regard. In addition, the map showing the potential site candidate pool contains numbers which we assume are Forest Practice Application (FPA) numbers. However, we were unable to access any FPAs in the Forest Practice Application Review System using several of the numbers labeled on the map. Moreover, if sites are being selected from a candidate pool of approved FPAs, presumably landowners who submitted those FPAs will be asked to withdraw, reconfigure one of their harvest unit riparian management zones (RMZs) to meet the study criteria and resubmit the FPA with the reconfigured RMZ along with the pilot rule approval. This could be a substantial disincentive to participating given the costs already incurred associated with the original FPA. WFPA recommends these issues be discussed and clarified and potentially a contingency plan developed to address landowner concerns about withdrawing and resubmitting FPAs. At a minimum, Adaptive Management Program (AMP) participants should anticipate site selection may take longer than anticipated.

While not directly related to the pilot rule request for ENREP, there are a number of potential issues with the project which the AMP should begin addressing as soon as possible. The ENREP is similar to the Hardrock

and Softrock studies in that it is evaluating a suite of response variables in a before-after-control-impact (BACI) design. There are no alternative treatments in the ENREP, just the existing Forest Practices Rules (FPR), similar to Softrock study. There are five sites scattered across all of Eastern Washington, one of those sites is an orphaned Np stream, meaning it is not connected by a visible stream channel to a downstream receiving water. At another treatment site a ~300 foot segment immediately upstream of the F/N break was clearcut to the streambank in order to evaluate responses in discontinuously flowing Np stream segments. The FPRs do not allow clearcut segments within 500 feet of the F/N break (this component of the study is covered under a pilot rule approved by the FPB in February 2021). Participating landowners were again asked to conduct upland harvest activities unlike their normal practices, harvest of an entire Np basin all at once, in some cases including non-merchantable trees. Two of our members declined to conduct this activity at their own costs, so contractors have been or will be hired to fall non-merchantable trees.

Understanding if/how these issues may affect scope of inference of results should be an important part of the AMP process. Similar questions encountered in the Hardrock and Softrock studies, such as how study streams fit within the population of Np streams and how study treatments compare to routine harvest practices, should be answered before ENREP is complete. We should also evaluate all response variables with the same rigor, not just focus on a single variable which might support an a priori policy position. As one example, biological health of streams as represented by macro invertebrate abundance and diversity had no detectable trend post treatment in Western Washington Np stream studies, yet those results are seldom considered or are outright ignored in TFW Policy response deliberations. Moreover, once again there is reliance on a prescription scale study with a few sites to tell us how FPRs are performing across a vast and variable landscape absent any broad scale status/trend and cumulative effects monitoring information and no advance agreement, or even shared understanding of, adaptive management decision criteria. Unfortunately, the AMP continues to drag its feet on developing a monitoring program and a workplan/schedule for incorporating structured decision making, including decision criteria, into the AMP process is unclear. Contrary to popular opinion, agreeing to a study design is not the same as agreeing to proper interpretation of study results and use of the information to inform adaptive management. WFWPA recommends these issues be dealt with cooperatively in advance of receiving ENREP, or any other study results, otherwise WFWPA will again need to address as many as we can independently and bring the results to the AMP in the form of proposal initiations.

Further, there is much work to do to arrive at a defensible and agreed to interpretation of the antidegradation policy in WAC 173-201A for forestry. Ecology's current interpretation is inconsistent with the plain language of the policy and therefore indefensible. This interpretation prejudiced the AMP deliberative process and the FPB decision regarding Western Washington Np buffer proposals in November 2022. We acknowledge Ecology's independent authority; however, using a misleading interpretation of that authority as leverage to obtain pre-determined outcomes is unacceptable in a cooperative system. It may also conflict with the FPB's obligation to promote sound resource protection policies coincident with maintenance of a viable forest products industry and ensuring forest practices do not significantly impair the capacity of aquatic habitat to meet resource objectives. Perpetuating this conflict risks undermining the integrity of the Forest Practices HCP. Given there are several projects in the AMP pipeline, like ENREP, which could result in similar conflict, it behooves us to make progress towards a more reasonable and workable interpretation all cooperators can live with. Such an interpretation would acknowledge the significant landscape scale benefits already accrued, be focused on important problems, provide for fine tuning of practices which don't create unintended adverse consequences, and deliver meaningful results for aquatic habitat.

Finally, these pilot rule requests highlight a need for the FPB to develop its own tool to support AMP scientific research, and incentivize independent forestry research which could benefit the AMP. While the

pilot rule authority in RCW 34.05.313 of the Administrative Procedure Act (APA) has been used successfully several times by the FPB, it's not a great fit for the need. The pilot rule authority in the APA is primarily intended for evaluating the feasibility of complying with or administering a proposed rule and/or for identifying efficient, and economical alternatives for achieving the goal of the rule. While it would be great if the FPB used the pilot rule authority in this way, that's not what happens. The AMP requests pilot rules for projects which are implementing project treatments which vary from the existing FPRs. It has never been used to test alternative, economical alternatives for achieving the goal of a rule or evaluating feasibility of implementing a proposed rule. We do encourage the FPB to consider using the APA pilot rule authority as intended; as importantly, we encourage consideration of a research exemption class of FPA. A scientific research FPA, with appropriate criteria and constraints, would be a more flexible, efficient, and transparent approach to allowing forestry research to vary from the existing FPRs. It may also encourage independent forestry research which, if determined to be relevant, could benefit the AMP at little to no cost. In order to give effect to such an incentive, the FPB would need to abandon the unwritten policy position that research which involves variance from the FPRs must be "approved" by the AMP. Given this position has no legitimate legal basis, that shouldn't be a problem.

Water Typing System & Np Buffer Rule Making

WFPA has repeatedly noted the procedural defects of the water typing rule making, in particular a lack of formal AMP vetting of the anadromous fish floor (AFF) component. Those concerns remain and will be provided to the FPB again at the appropriate time. While a subgroup of TFW Principals had been meeting to explore agreement on a single AFF alternative, those were unsuccessful and given the events which occurred at the November 2022 FPB meetings, chances for an agreement have likely slipped away. Finally, we note the August 2022 FPB motion accepting AFF alternatives A4 7% and D also directed staff to develop a AFF validation study proposal initiation. There has been no substantive discussion or updates on the status of the proposal initiation other than listing it on the FPB workplan with a completion date of May 2023. A validation study for a AFF is a technically challenging endeavor and would benefit from a more open discussion prior to getting too far into developing the proposal initiation.

The Np buffer proposal report submitted to the FPB by WFPA/WFFA/WSAC in October 2022 described many of the technical and procedural hurdles which prevented a full consensus recommendation from TFW Policy. Despite little to no acknowledgement or discussion of those issues during the October and November FPB meetings, they are legitimate, and will likely surface repeatedly with future AMP projects if not properly addressed. We have refrained from formalizing our procedural concerns with the deliberative process in the hopes that TFW/F&F leaders would prioritize cooperative agreement and maintaining the integrity of the Forest Practices HCP over winning for particular interests. Again, the events at the November 2022 FPB meetings reveal our hope was misplaced. Consequently, we will be formalizing our complaint and submitting it to the FPB in the near future.

Finally, the timeline contained within the rule making and board manual action plan is difficult to follow in a table format. WFPA recommends the various steps be displayed in a Gantt style chart. This will make it easier to follow, highlight resource pinch points, and result in a more realistic schedule.

Petition for Rule Making

WFPA is not taking a position on the request from Bill Poss and Allison Warner regarding WAC 222-30-110, timber harvest on islands at this time. However, it is not clear the request meets the standards of a rule petition, and we are uncertain of the precise problem being raised. The FPB agenda indicates WAC 222-30-110, timber harvest on islands is the focus of the request. The letter suggests definitions of forest landowner and/or persons may need to be clarified. Later on, the letter mentions development pressure on forest

resource lands as a concern - counties have existing tools available to incentivize long term forestry. We recommend DNR first discuss the issue(s) with the requestors and the county to clarify the problem and if the FPB needs to be involved; it may be an administrative or county authority issue. If the issue needs to come to the FPB we suggest the request be revised to be clearer and meet the standards of a rule petition.

Thank you for the opportunity to comment, should you have any questions I can be reached at dcramer@wfpa.org or (360) 280-5425.

Sincerely,

Darín D. Cramer

Sr. Director of Forest & Environmental Policy