WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Commissioner of Public Lands

MEMORANDUM

TO: Forest Practices Board

FROM: Marc Engel
Forest Practices Assistant Division Manager for Policy and Services

DATE: July 26, 2013

SUBJECT: Forest Practices Hydraulic Project and Biomass Rule Making

On August 13, 2013, I will request the Board's adoption of the Forest Practices Hydraulic Projects (FPHP) and Forest Biomass rules with staff recommended changes. Adoption of the FPHP rules complete the Board's obligation resulting from 2012 legislation (2ESSB 6406). The FPHP rules streamline the application and approval process for forest practices that include hydraulic projects by incorporating applicable hydraulic code rules into appropriate sections of Title 222 WAC. The Forest Biomass rules implement recommendations from the 2012 Forest Biomass Work Group. The DNR requests the effective date for these rules to be December 30, 2013. This will allow DNR to finalize new application procedures and design and implement staff training.

At your May 14, 2013 meeting, the Board directed staff to file CR-102 Proposed Rule Making notice to initiate both rule makings. In this notice, the Board indicated they are considering two options for each of two definitions in WAC 222-16-010: "bankfull width" and "forest practices hydraulic project."

The CR-102 was published in the Washington State Register on June 5 and hearings were held in Ellensburg and Olympia on June 25 and June 27 respectively. The comment period ended on June 28. The Board received five comments in support of the Forest Biomass rule and a range of comments from 24 commenters on the FPHP rule proposal. Most comments on the FPHP rules focused on whether to add the definition of "ordinary high water line" in the definition of "bankfull width" and if Type N waters should be included in the definition of "forest practices hydraulic projects."

After consideration of the public comments and re-analysis of the legislation regarding the two options under consideration, staff recommends Board approval of the following definition options:

- "Bankfull Width", no change to the definition;
- "Forest Practices Hydraulic Projects", inclusion of "Type S, F, or N Water" in the definition.

Upon review of existing forest practices rules and 2ESSB6406 for the definition of bankfull width, staff recommends the Board accept the no change option. The legislation directed the Board and DNR to incorporate fish protection standards from the hydraulic code (chapter 220-110 WAC) into forest practice rules. To be consistent with this direction, staff has incorporated all references to the "ordinary high water line" to those Hydraulic Code rules incorporated into the forest practices rules.

This change makes the metric to base the design of FPHPs in Type S and F waters the "ordinary high water line' and the designs for FPHPs in Type N waters to use the existing forest practices rule metric of bankfull width. The definition of "ordinary high water line" exists in WAC 222-16-010, staff has added "ordinary high water line" in WAC 222-160-025(4), WAC 222-24-040(7), WAC 222-24-041(1) and (4) and WAC 222-24-046.

Staff recommends the Board accept the current draft rule language including Type N waters in the definition of FPHP. This is consistent with the Hydraulic Code requirement to consider impacts from projects in Type N waters.

To assure consistency with the current level of review of hydraulic projects under the Hydraulic Code, staff recommends the addition of clarifying language to WAC 222-16-050, *Classes of Forest Practices*, to ensure understanding that an FPA including a hydraulic project can be:

- A renewal of a Class III or IV FPA, if the operation <u>or the forest practices hydraulic project design</u> are not modified; and
- An FPA which includes a hydraulic project can be any class depending on its potential to damage public resources.

For further clarify, several rules that do not pertain to all water types were modified to clarify when the activity: is "associated with Type S and F Waters" (WAC 222-16-037(4)); "in Type S and F Waters" (WAC 222-16-025(4), WAC 222-30-100(5) and WAC 222-30-060(1)); and "in Type S and F and associated Np Waters" (WAC 222-20-017(1)).

Additional recommended changes to the draft FPHP rules include the addition of the phrases:

- "Or stabilized with other erosion control techniques" is added to WAC 222-16-025(d); WAC 222-24-041(4)(c),(5)(h),(6)(d); WAC 222-24-044(9); and WAC 222-24-046(5).
- "Fish passage at all life stages", which is the forest practices standard and rule terminology, replaces "free and unimpeded passage for fish" in two rules: WAC 222-24-010(2) and WAC 222-24-020((6)(d).
- "Or above the 100-year flood level if present" directing the deposit of wastewater from project activities is added to WAC 222-24-041(4)(f), (5)(f), and (6)(d) for consistency with forest practices standards.
- "Placed on stable locations outside the stream's influence" for appropriate placement of debris related to falling and bucking and cable yarding is added to WAC 222-30-050(1)(a)(iii) and WAC 222-30-060(1)(c).

The Forest Biomass rulemaking defines forest biomass and adds clarity to the existing rule requiring inclusion of biomass removal in the harvest planning rule.

The clarifying language for the removal of forest biomass and the integration of existing rules from the Hydraulic Code into the FPHP rules do not require the following analyses:

- Small forest landowner long-term application (LTA) analysis: WAC 222-20-016(4) for certain rule making activities regarding small forest landowner long-term applications. In the case of FPHP rules, any hydraulic projects approval (HPA) associated with LTAs approved prior to December 30, 2013 will continue to be administered by WDFW until

projects are complete or the HPA expires. After December 30, 2013, new LTAs that include FPHPs will be administered by DNR and existing LTAs with uncompleted hydraulic projects will be required to obtain an FPA for applicable FPHPs.

- SEPA analysis (chapter 43.21C RCW) is not required per 2ESSB 6406, section 213, which states that the incorporation of fish protection standards adopted by the legislation is exempt from compliance with SEPA.SEPA was not required for the Forest Biomass rule.
- A small business economic impact statement (chapter 19.85 RCW) was not required because both rules do not impose additional cost on businesses.

Enclosed for your consideration are both draft rule changes, draft concise explanatory statements (CES) and comment letters, FPHP final economic analyses and a table referencing rule location changes and explanation for rule language for FPHP rule making. In the CES you will see a summary of comments received, responses to the comments and differences between the text of proposed rule as published and the text of the enclosed recommended rules.

I look forward to seeing you at the August 13 meeting.

ME/
Enclosures: Proposed rule language
Draft Concise Explanatory Statement
Written comments
Economic Analysis (FPHP rule making)
Explanatory rule table (FPHP rule making)