13-01

MERRILL & RING
P.O. Box 1058 ·Port Angeles, Washington 98362
Office 360.452.2367 ·Fax 360.452.2015 ·Toll free 800.827.2367

June 24, 2013

State of Washington
Forest Practices Board
Mr. Aaron Everett, Chair

Re: Forest Practice Hydraulic Project Rule Making

Dear Chairman Everett and Forest Practices Board Members:

The following comments were presented to the Forest Practices Board at its May, 2013 meeting. I was instructed to re-submit the comments so that they would be included in the rule-making comment period.

I am the Vice President of Timberlands for Merrill & Ring, managing 60,000 acres owned by R.D. Merrill Company, Ring Family L.P. and JLCG LLC. I recently completed a six year term as a general public member of the Forest Practices Board.

I support the goals of process and regulatory efficiency that should result from the full integration of Hydraulic Project Approval (HPA) and Forest Practice Act (FPA) rules. This is a complex task and I thank the State and private stakeholders that have spent significant time and energy on this process. There are several areas of concern in the draft rule that I bring to your attention.

Throughout the draft rules there are numerous references to "bankfull width" where the current hydraulic code refers to "ordinary high water." The effect of the change is to expand authority where is does not currently exist. The new rule should stay consistent with the current requirements.

WAC 222-12-050 Notices to Comply – Stop Work Orders
"(5) In emergency action, where the department requires the operator or landowner to do immediate work <u>that could affect</u> the bed <u>or flow</u> of the stream, the department shall first seek <u>consultation</u> from the department of fish and wildlife."

Any activity in a stream could *<u>affect</u>* the bed or flow of a stream. The inclusion of "flow" is an addition to current hydraulic rules. If it is truly an emergency action that is being required by the DNR, how can the action be improved by seeking consultation which will only delay the prescribed course of action?

WAC 222-16-010 General Definitions
""Forest practices hydraulic project" means a forest practices activity that includes the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any Type S, F, and N Waters."

This definition expands the requirement for forest practices hydraulic project beyond what is currently in law. WAC 220-110-035 (7) states "...***the Forest Practices Board has adopted rules that include fish protection measures normally included in HPAs for projects in nonfish bearing waters.*** Based on the fish protection measures contained in chapters 222-16..., forest practices, as defined in chapter 76.09 RCW, conducted under an approved forest practices application or notification issued by the department of natural resources, and ***conducted in or across type Np or Ns waters...do not require an HPA."*** (Emphasis added).

This definition also creates a conflict with the classification of forest practices in WAC 222-16-050 (4) Class II, (e) and (5) Class III (a). The Class II definition includes some harvest and road construction activities within Type Ns waters. However, the Class III definition includes all forest practices including forest practice hydraulic projects, which has previously been noted as defined to include all Type N waters. Even the most simple culvert installation in a Type Ns water will "change the natural flow or bed" of that stream. The combination of these new definitions places all of these activities in the category of forest practices hydraulic projects and creates a conflict in forest practice classification. Given the integration of rules, best management practices and efforts to streamline the regulatory process, the new rule should not be adding more practices to the Class III definition.

WAC 222-24-020 Road Location and Design
"(22) (c) Detailed plans for bridges, ~~large~~ culverts or other complex elements of the proposal; and..." Detailed plans should only be required for culverts where fish passage is an issue.

WAC 222-24-041 Water Crossing Structures in Type S and F Waters
"(2) An approved forest practices application is required for ... **maintenance** associated with any bridge structure. Typical maintenance includes ... other activities where there is a **potential** for wastage of ... **sediments, or bridge parts** into the water ..." (Emphasis added).

By this definition it will be required to obtain an approved forest practices application to replace or nail down a piece of bridge decking, or even to shovel sediment off the bridge, because a nail or rock has the **potential** to fall into the water. The Board should not be adding complexity to the Forest Practices program, increasing the need to get approved applications, or adding to the process workloads of the DNR or landowners, when none of this will add to resource protection. This paragraph could be modified to allow routine bridge maintenance without the need for an approved FPA. The Board should not create a situation where the simplest activity requires an approved FPA or results in a violation.

WAC 222-24-041-(6) Permanent Culvert Installation
"(b) (ii) (A) **Water depth** at any location within culverts as installed and without a natural bed shall not be less than that identified in Table 1." (Emphasis added)

There are many situations in which **this condition will be impossible to meet.** Paragraph (i) already requires a culvert to be buried to 20% of its diameter at the outlet end and placed level. Table 1 specifies flow depth minimum levels for "seven-day low flow discharge", with a minimum of 0.8 feet of depth. Many small fish streams do not have 0.8 feet of depth during high flows and are dry during the low flow periods of the year. How is it possible to require and achieve a level of flow in a culvert that doesn't exist in the natural stream? Minimum flow depth should replicate the conditions in the natural stream, to the extent possible and practical. The Table 1 requirements may often be impossible to achieve the Board should not create a situation that will cause a forest practice violation. The table should be deleted or at least modified to accommodate natural site-specific conditions.

WAC 222-24-046 Bank Protection
"(5) …All disturbed areas shall be protected from erosion within seven days of completion of the project using vegetation or other means. The banks … shall be revegetated with native or other approved woody species…"

This paragraph creates conflict and may eliminate the use of popular erosion control techniques. Hay bales, jute mats and other bank stabilization materials may have non-native (to the forest) seeds, such as grasses and alfalfa, and do not contain woody species. However, they may be the only practical solution for bank protection during the summer construction season when it is not possible to plant woody species that will survive. This section could be replaced with an objective statement that banks must be stabilized to minimize entry of bank material into the stream, similar to the text in other forest practice rules, regulations and BMP's. The same language occurs in several places within this draft and should be changed in all instances.

Thank you for considering these comments regarding the Forest Practice Hydraulic Project Rule Making. I will be happy to discuss this further with you.

Sincerely,

Norm P. Schaaf
V.P./Timberlands

FPHP 13-02

SIERRA PACIFIC INDUSTRIES
Growing Forests For Our Future

Sierra Pacific Industries

Hamilton Tree Farm • 14353 McFarland Rd. • Mt. Vernon, WA 98273 •
(360) 424-7619

Patricia Anderson, DNR
PO Box 47012
Olympia, WA 98504-7012

June 25, 2013

Ref: Forest Practices Board, Rules Change Proposal

Dear Forest Practices Board members:

We wish to offer several comments on the proposed rules package received yesterday regarding the integration of hydraulic projects into approval of FPA's (Forest Practices Applications):

1. During the committee debates of the authorizing bills for these proposed rules (in which we testified) ***the stated purpose and need for these actions was consistently to "streamline" the permitting processes,*** creating more of a "one-stop shopping" scenario. The goal was clearly stated as one of increasing efficiency to both the regulatory agencies (DNR and DFW) as well as the landowners. However, ***the proposed rules create new conditions that would take us in the opposite direction from this goal:***
    a. Previously, all Class III FPA's were required to be approved within 30 days. Under this new proposal (AC 222-12-030) this review period would be doubled, not shortened or "streamlined" to 60 days. How does this rule proposal meet the intended objective of the authorizing legislation to increase efficiency?
    b. The lines of authority for permit approval would become very cloudy under the proposed rules (New Section AC 222-20-017). FPA's that include a "forest practices hydraulic project" would now be subject to a "concurrence review" by the DFW – upon completion of their review, the DFW would then determine whether or not they "concur" with the proposal. Although we assume that the ultimate decision to approve the FPA still resides with the DNR as lead agency, this new language essentially grants the DFW a "veto power" for any permits that include a hydraulic project, since:
        i. There is no provision in the proposed rules for procedures when the landowner, or DNR, do not agree with the "nonconcurrence" decision from DFW – essentially, the intent to combine the decision-making authority into one government agency (DNR) is eliminated by this clause, even though it was the intent of this legislation to eliminate the previous system of two separate permits;

ii. It is difficult to imagine any instance in which DNR might seek to "overrule" a nonconcurrence determination from DFW on fish issues. This process would authorize DFW to "veto" any permit proposal with a "hydraulic project". The only recourse for a landowner to pursue would be the appeal of the rejected FPA to the FP Board; and

iii. This entire section establishes two separate standards for review and compliance – in the first case, [Section 4(b)(ii)] states that the standard for DFW to concur is that, in their opinion, the proposed actions would be ***"consistent with fish protection standards"*** (what these are, and where a landowner might find them is not mentioned). In the second case, the standard by which DNR must review, analyze, and determine compliance is stated [Section 5(a)] that ***"a forest practices hydraulic project in the application will result in direct or indirect harm to fish life."*** (Emphasis added). In practice, DFW would analyze a landowner's proposed permit to determine if it meets some unspecified "fish protection standards". If they do not concur, does this mean that the DNR would deny the FPA, since the "nonconcurrence" is the same as a determination of "direct or indirect harm to fish life"?

c. During the discussions that led up to passage of the authorizing legislation for this rules package, the intent of the legislature was quite clear – their desire was to streamline the permitting process and create regulatory efficiencies by granting authority to DNR for issuance of most hydraulic permits within their existing authority to grant FPA's. However, there was recognition that certain complex hydraulic decisions would require help from DFW – they specifically identified major bridges, along with large and complicated crossings where large amounts of unstable fill were involved. However, this proposed rules package appears to move far beyond that intent, and mandates "consultation" from DFW on even the most routine hydraulic issues and even expands their role beyond current requirements (as stated in section (2), below). This is inconsistent with their intent, and will not meet the goal of increased regulatory efficiencies.

2. New ***proposed rules for road construction and maintenance are not consistent with the past 12 years of RMAP work and nullify much of the certainty and stability on which the Forest and Fish Agreement was founded.*** Specifically, there are several new policies that are slipped into these rules proposals that change the original premises and will cost the landowners a loss of time, certainty, and revenue:

   a. Amendatory Section (AC 222-24-010) would change, or add, several new policies, including a new standard for "no net loss of fish habitat";

   b. Stream crossings would now be required to "provide free and unimpeded passage for fish at all life stages";

c. FPA's would now be required to provide detailed plans for (not just bridges and large culverts) but all culverts, and also consider an option whereby hydraulic projects would include not just Type F and S waters, but Type N (non-fish) waters as well;
d. New Section (AC 222-24-041) would require an FPA for activities that formerly did not have this requirement, such as cleaning, painting, or other minor maintenance activities to established bridges;
e. If the above conditions become the new policies, does this mean the millions of dollars already spent on RMAP projects will need to be re-examined for compliance with these new policies? If so, how does this comport to meet the intended goal of regulatory efficiencies and cost savings to both government agencies and landowners?

3. There are ***several inconsistent or conflicting provisions in this rules package***, which are assumed to be minor "typo's", such as the new definition of Forest Practice", which would include ***"growing AND removal through harvesting"*** (Emphasis added). This should probably read as "OR", not "AND", since several of the listed activities (precommercial thinning, reforestation, biomass, etc.) do not ordinarily remove material through harvesting.

4. We have heard that there is also a ***draft Board Manual*** for implementation of these draft regulations being circulated, but have not seen it yet. To avoid any confusion, we suggest that a Board Manual drafted to implement the proposed rules package ***would be circulated for comments only after the rules were fully discussed and subsequently passed by the Forest Practices Board.***

This list of issues should not be considered exhaustive, but indicative of our overall concern – these proposed rules do not move us toward the intended purpose of the Legislature as written. We see no significant streamlining or consolidation of authority under DNR unless, and until, the newly established "veto authority" granted to DFW is removed. Similarly, the relative stability we were promised through the original Forest and Fish agreement (the so-called promise of 50 years of certainty) is further eroded through some of the new policy changes and cloudy authorities these rules would establish, particularly in regard to road construction and maintenance.

We ask that you consider these comments as you proceed.

Respectfully,

Thomas C. Nelson

Tom Nelson
Washington Timberlands Manager
Sierra Pacific Industries

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SFI-00027

FPHP
13-05

United States Department of the Interior
United States Fish and Wildlife Service
United States Department of Commerce
National Marine Fisheries Service

U.S. Fish and Wildlife Service
510 Desmond Dr SE, Suite 102
Lacey, Washington 98503

National Marine Fisheries Service
510 Desmond Dr SE, Suite 103
Lacey, Washington 98503

JUN 26 2013

Forest Practices Board
c/o Patricia Anderson
Forest Practices Board Rules Coordinator
1111 Washington St SE
PO Box 47012
Olympia, Washington 98504-7012

To Board Chair Everett and the Forest Practices Board:

Subject: Forest Practices Hydraulic Projects Public Comment

Thank you for the opportunity to comment on your rulemaking regarding Forest Practice Hydraulic Projects (FPHP). The US Fish and Wildlife Service and NOAA's National Marine Fisheries Service (collectively, the Services) understand you are undertaking this rulemaking in response to Legislative direction requiring this action. To aid in your alignment of the current rulemaking with the existing Forest Practices Habitat Conservation Plan (HCP), this letter highlights two of the rule elements that we consider important to the HCP. The first is the current question of FPHP jurisdiction, which we believe should be inclusive of all typed waters. The second is the establishment of performance standards for fords, which we believe are not yet developed in rule. For that, we recommend that rule adaptation to establish enforceable standards occur following rule adoption. We provide specific recommendations below.

1. <u>FPHP Jurisdiction</u>

We are aware of a recent proposal to limit FPHP jurisdiction to a subset of typed waters based on perceived differences between "bankfull width" and "ordinary high water" and through exclusion of Type N waters from FPHP jurisdiction. In order to maintain effective HCP implementation, we encourage broad FPHP jurisdiction that enables the Department of Natural Resources (DNR) to conduct project reviews and to condition permits to meet protective standards for all projects subject to Forest Practice rules that "use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state" (quoted from existing WAC 222-110-010, Hydraulic Code Purpose). By reviewing hydraulic projects in all typed waters under the FPHP, you link physical project proposals with expert reviewers, ranging in specialty from

engineering to fish biology, and other stakeholders. These reviews by experts and stakeholders were an important part of the process agreed to in the HCP to protect fish, fish habitat, and other public resources during HCP implementation.

Likewise, the current rules provide permits for hydraulic projects on non-fish waters directly through Forest Practices Applications. Retaining this jurisdiction on non-fish waters provides the ***inclusive jurisdiction for all projects that may alter the flow or bed of any salt or fresh water*** that the Services analyzed in considering the HCP for take exemptions under the Endangered Species Act. Therefore, we emphasize the importance of FPHP jurisdiction extending to all typed waters.

Recognizing the limited availability of FPHP reviewers, we understand that the DNR may have to prioritize FPHP reviews for certain projects. We urge that managing priorities, not limiting jurisdictions is the appropriate action. Priorities may be based on project locations (e.g., projects in fish-bearing waters) or project types (e.g., installation of long-term structures). Similarly, efficiencies can be reached through applying standardized conditions to routine permits. To maintain full consistency with the HCP, we recommend that FPHP jurisdiction include all "typed waters." The HCP's conservation measures are not limited to fish-bearing waters and ideally FPHP coverage would marry with the HCP.

2. <u>Fords and Equipment Crossings</u>

We have looked at specific text about stream crossings resulting from the incorporation of the Washington Department of Fish and Wildlife's (WDFW) Hydraulic Code into the DNR's Forest Practice Rules. Specifically, the text about options for moving heavy equipment across waterways appears to contrast with the protective standards already required in the HCP. We are highlighting this issue now to recommend solutions before potentially damaging impacts occur. However, we recognize that rule adoption may be procedurally necessary prior to rule adaptation. Specifically, we are concerned that the rules regulating FPHP would allow for "fords" and equipment crossings on flowing waters and on fish-bearing waters. Depending on the enforceable performance standards for equipment crossings, the effects of rule implementation could meet, or significantly deviate from, the performance standards agreed to in the HCP.

> *<u>Forest Practices HCP: Rationale for the Plan--Forest Roads:</u>*
> *The forest practices rules are designed to prevent, minimize, and/or mitigate road-related effects on sediment delivery, hydrology and fish passage. This is accomplished by screening forest practices applications and notifications for unstable slopes and by implementing best management practices during road construction, maintenance and abandonment operations. BMPs that address sediment-related impacts include* ***<u>constructing stable road prisms and water crossing structures</u>****,* ***<u>disconnecting road drainage from stream</u>*** *networks, avoiding the construction of stream-adjacent parallel roads, abandoning existing stream-adjacent parallel roads, limiting the construction of duplicative roads and restricting log haul during wet periods (see WAC 222-24-010(3)). Hydrology-related impacts are minimized through the implementation of BMPs that* ***<u>maintain and restore natural flowpaths</u>*** *and limit road construction in wetlands. Fish passage barriers are corrected as part of the RMAP process for both large*

and small forest landowners. (Summary of road performance standards, excerpted from HCP pg 246, emphasis added)

Neither the HCP, nor the Forest Practice rules describe standards for "fords" sufficient to construct and operate fords as fish-protective stream-crossing structures. The adoption of WDFW's HPA rules expands the opportunity to use fords for forest practices, and draft guidance for the Board Manual now describes construction and maintenance BMPs and situations where fords may be considered. The proposed guidance strives to establish a performance standard for fords that is equal to the standard for roads and states that under limited circumstances, fords may be considered when they provide better protection for public resources than would other water crossing structures. Yet, the rules lack enforceable standards to protect fish. We do appreciate that, under the proposed guidance, fords would not occur at the frequency of "skid roads" and yarding corridors, but at a small subset of roaded stream-crossings for temporary purposes where other crossing structures are not suitable. In order for the Services to have assurance and for DNR to enforce that fords will indeed "be constructed and maintained in a manner that will prevent damage to fish life, habitat, and water quality," protective standards are needed in rule. To fit within the existing Incidental Take Permits, the Services recommend that rules regarding fords or equipment crossings be modified to establish the following performance standards after adopting the broader package of FPHP rules:

1) In fish-bearing waters, fords may only be used when the affected stream is dry. Fords may also be used on non-fish streams when they are dry or where they are not connected by surface flow to fish-bearing streams. Rationale: This eliminates any risk of crushing fish and of delivering sediments to fish-bearing waters.
2) Shape or water-bar road approaches to fords to ensure that surface water is directed off of the road surface and onto the forest floor to ensure that no more sediment is delivered from the road surface than would be accepted from a conventional crossing structure.
3) Leave fords inaccessible to motor vehicles when not in use for forest practices.

We appreciate that protection of aquatic species is a priority of the Board during ongoing development of Forest Practices rules and guidance. We also appreciate the positive work of DNR staff and stakeholders on FPHP integration. Finally, we highly value your support for the continued coordination with WDFW and Tribes on any FPHP that may affect HCP-covered aquatic species or their habitat. If you have any questions about this letter or associated material, please contact Marty Acker of USFWS at (360) 753-9073 or Martin_Acker@fws.gov, or Jody Walters of NMFS at (360) 534-9307 or Jody.Walters@noaa.gov.

Sincerely,

For Ken S. Berg, Manager
Washington Fish and Wildlife Office

Steve W. Landino
Washington State Director
for Habitat Conservation

13-06

ANDERSON, PATRICIA (DNR)

From: Frank Geyer <frank.geyer@quileutenation.org>
Sent: Thursday, June 27, 2013 2:55 PM
To: ANDERSON, PATRICIA (DNR)
Subject: re: Rule making for BFW definition and Type N stream HPAs

Patricia,

The Quileute Tribe would like to comment on the Proposed Rule Changes to the BFW definition and the requirement of HPAs on Type N streams.

First I would like to say that the Tribe supports the language under Option 2 of the definition of BFW. While many may find this inclusion of OHWM under the definition confusing I think it is appropriate and simply makes the definition consistent with the current WDFW definition of boundaries of stream beds etc.

Secondly I would like to say that HPAs on Type N streams should be considered for certain circumstances where impacts to WQ, human health, and fish may be an issue.

Thank you for the opportunity to comment.

Frank Geyer
Deputy Director/TFW Program Manager
Quileute Natural Resources
(360) 374-2027
frank.geyer@quileutenation.org

13-08

FPB Testimony, June 27, 2013

Good evening, I am Dave Roberts. I am ~~a~~ Sr forest engineer for Port Blakely Tree Farms.

I probably have a bit of a different perspective than most that are here this evening, in that, I work for a family-owned company that prides itself on doing what's right for the land and resources and being innovative in problem solving ~~even if the bottom line is impacted.~~

BACK GROUND

Since graduating from the University of Washington in 1983, I've worked as a forest engineer for both private and public organizations, including 11 years with the DNR. In addition, I've worked on stream crossings in several western states, including WA, OR and AK. In the last 12 years since joining Port Blakely, I've worked on 320 plus artificial fish barriers that were identified in our RMAP inventory. This included taking projects from start to finish… surveying the crossing, Designing permitting, installing, ~~using, and monitoring~~. Not only in Washington, but in Oregon as well. The one thing I have learned in these many ventures into the hyporeic zone is that *no one crossing is alike*

I would like to visit a couple of issues:

First, the negatives of unnecesary regulation.

1. Our Oregon fish passage projects were finished 6 years ahead of Washington. *Why? Less logistical regulations allowed us complete the work in less time. . Oregon specified the desired results, not the "how to".*

By specifying results, and not the how to, the innovation of many engineers is unleashed and allows much more opportunity for advancement and eventual optimality.

2. Grant funding was available because the restorations weren't legally mandated

3

4. Oregon rules don't mire down the regulators and landowners with issues that don't have problems similar to the proposed escalation of n waters to Class 3 FP. I do not feel there is a problem with the status quo and therefore see no benefit to the resource by changing. The moral being: keep it simple regulatorily. ~~For~~ optimal Results

*I do **not** advocate changing the status of type n waters FP class.*

The **second** issue I would like to visit is the benefits of oversizing structures:

Is oversizing the world good engineering or is it a waste of resources to a point of diminishing or no returns?

as an engineer Hurry The ~~Rating~~ never likes to have a Failed Design

Regarding the bankfull width ordinary high discussion…

I did an unofficial compilation of our fish passage structures, which I had 2 categories: 1. Streams under 5'

2. Streams over 5'

In most cases, for streams under 5', the BFW and ordinary high water mark didn't differ significantly. ~~Thus the difference was not significant.~~ Until we got to the higher gradient mountainous streams.

In streams over 5' the OHW/BFW difference averaged nearly 2 ft. This is a huge difference when we're talking a spiral pipe versus a multi-plate arch or bridge.

Many forest installations are not as cut and dry lowland or municipal installations. The streams gradients are typically steeper and channels more incised with higher energy which often disallows many crossing applications, and being incised they align on a curve which makes structure widths and lengths grow. I am not convinced all the extra size being thrown at these structures actually benefit the resource. **For instance** The steeper steams in mountainous applications are requiring a stream simulation culvert so we are seeing a 9 foot structure in a 2 ft stream . The (1.2 bfw +2ft) is the recipe used for stream simulation culverts, interestingly, the plus 2ft is actually for debris passage and was not based on any calculation or data collection. There are other ways to effectively treat debris passage… *again turn the engineers loose!*

in conclusion

I do **not** advocate changing ordinary high to bank full measurements since there are so many other oversizings built into the system.

Thank you.

If anyone has any questions I can be contacted through the port Blakely office in tumwater

13-09

Testimony of Mark Teply on behalf of the Washington State Society of American Foresters

Washington Forest Practices Board Public Hearing, June 27, 2013, Olympia, Washington

Thank you Mr. Chairman. My name is Mark Teply and I am speaking on behalf of the Washington State Society of Foresters. The Society of American Foresters (SAF) is the national scientific and educational organization representing the forestry profession in the United States. The Washington State SAF represents over 500 professional foresters in western and central Washington. We are here in support of proposed rule-making that incorporates recommendations from the Forest Practices Biomass Working Group to clarify that forest biomass is subject to the forest practices rules.

I have attached to my testimony two position statements adopted by our membership. From them, I'd like to draw two points which support this rule-making. First, forest biomass utilization helps promote working forests. A working forest is one actively managed for a sustainable and balanced delivery of social, ecological, and economic products and values. Forest biomass utilization provides landowners needed economic opportunities and alternatives for sustainable forest treatments. Such treatments help restore, maintain, and protect healthy forests and site productivity. Such active management helps retain working forests threatened by alternative land use conversions. Working forests help maintain a viable rural economy. The Washington SAF supports "no-net-loss" of working forests by encouraging the creation, restoration, protection, and enhancement of working forests in the State of Washington. Forest biomass utilization is an important part of this.

Second, we recognize that forest biomass utilization must be done so in a manner that prevents the loss of forest site productivity by meeting and exceeding minimum state forest practice rules for retaining leave trees and down woody debris. When doing so, we cite several studies that suggest that the risk of site productivity reduction is low. But, we also encourage monitoring of forest biomass utilization to prevent environmental degradation. Preventing the loss of site productivity is important to

SAF because one of our core missions is to ensure the continued health and use of forest ecosystems and the present and future availability of forest resources to benefit society. Overall, proposed rule changes that ensure understanding that forest biomass harvest is subject to the forest practices rules is consistent with our mission and our position statements. Thank you for your time.

Washington State SOCIETY OF AMERICAN FORESTERS
4033 SW Canyon Road • Portland, OR 97221 • 503.224.8046

CHAPTERS: Central Washington • Mid-Columbia • North Olympic • North Puget Sound • South Puget Sound • Southwest Washington • Longview • Admiralty Inlet Chapter • Grays Harbor Student Chapter
Green River Community College • University of Washington Student Chapter • Evergreen Student Chapter

WSSAF Working Forest Position Statement

Position

The Washington State Society of American Foresters (WSSAF) supports "No-Net-Loss" of working forests by encouraging the creation, restoration, protection, and enhancement of working forests in the State of Washington.

Characteristics of Working Forests

- A working forest must be an actively managed sustainable forest as measured in ecological, economic, and social terms. This implies a host of things—including the notion of permanence over time.
- A working forest must include a management plan that identifies objectives that will provide a balance of social, ecologic, and economic products and values and a schedule for management activities that will accomplish them.
- Active management on working forests means that silvicultural practices—including determination of tree species composition, stocking control, thinning, prescribed burning, and timber harvest—are planned and implemented recurrently and perpetually over most of the forestland area, causing a different balance of benefits than would occur naturally.
- A working forest must maintain the intrinsic value of the land. These values may include; soil productivity, historical or cultural resources, or other ecological or conservation values.

Issue

With increasing public awareness of the benefits of working forests as a desirable alternative to land-use change and development, it is timely for the Washington State Society of American Foresters to clarify what we mean by promoting working forests. In order to develop durable policies that support and maintain working forests, a common vision is necessary.

Discussion

Working forests may be small or large and can include single (stand scale) or multiple ownerships (landscape scale). **The operative factor is the existence of an over-all plan that characterizes the intent to produce multiple products and values across the entire forest.** In order to provide specific ecological benefits, some areas of a working forest may not receive silvicultural treatments or have planned timber harvest. Examples on a stand or stream reach scale are riparian stream buffers, un-harvested areas on unstable landforms, endangered species critical habitat, and non-forested wetlands. Examples on a landscape scale are wilderness areas and endangered species habitats as subsets of a larger working forests. Rarely can any single acre of forest provide all the goods and services we expect and need, but they are achievable with active management across the broader mosaic of a working forest landscape.

Working forests are managed forests, but not all managed forests are working forests. For example, a forest that is designated as a wilderness, and that is not a subset of a larger actively managed area, is not a working forest. Likewise, a forest that is managed solely for watershed protection, without the potential provision for periodic harvest of commercial timber products, is a managed forest but not a working forest. In general, working forests provide multiple benefits rather than single or exclusive benefits.

Conversion of Working Forests to Non-Working Forest Use

The area of working forest is decreasing on federal, state, corporate, and private forestland ownerships in Washington State. [a]

Federal lands continue to experience conversion from multiple to single use through administrative policy or legislative changes. **For example, the Adaptive Management Areas and Late Successional Reserves under the Northwest Forest plan are not working forests without similar acreages of Matrix Forest.** Also, forests managed under a Collaborative Forest Landscape Restoration Program, National Parks and Wilderness areas are not working forests if they do not plan for recurrent and perpetual timber harvest over most of the plan area. Without an equitable balance of objectives, including commodity production, these lands no longer support working forests.

Loss of federal working forests has had the unintended consequences of exacerbating forest health and fire risk across the landscape. Additionally, the lack of management and subsequent reduction of the commercial timber products has had a trickledown effect on rural communities ultimately resulting in mill closures. Fewer mills result in the lack of markets for periodic timber harvest that lower the value of commercial products from both public and private working forests and encourage conversion to non-forest land uses. Similarly, for 1989 through 2011 the Washington State Trust Land Transfer program has transferred 108,043 acres of working forest into recreational or ecological uses. [b] As such, they are no longer working forests.

For private commercial forest lands vertically integrated corporations, driven by federal tax policies, have sold large tracts of working forests to individual private investors and investment funds. Typically, to maximize returns and help finance these transactions, new investors "spin off" parcels for conversion into conservation areas, residential subdivisions, or commercial development.

As would be expected with a rising population, lands that were once productive working forests have increasing conservation or development value. As urban and suburban areas expand, it becomes increasingly difficult to continue to manage the remaining working forests. Local, state, and federal regulations have created disincentives for private forest landownership. **As property values and regulations increase, private forest landowners have sold lands to owners that choose not to manage them as working forests.** [a] In Western Washington non-National Forest timberland acres diminished at an average rate 30,000 acres per year from 1978 to 2001. [c] In Eastern Washington the average annual rate of conversion was 23,000 for years 1980 to 2002.

This trend is especially evident with family and individual forest landowners that own approximately half of the private forestland in Washington. In addition to being in close proximity to areas with higher development values, these owners are disproportionately older than the general population and less willing to bear the burden of complex and costly regulations. [a] The sale of part or all of a tree farm can be an attractive financial alternative to the regulatory and market risks of managing a working forest when a landowner is faced with the need for retirement income or intergenerational transfer. Additionally, estate taxes frequently cause the sale of working forest land for non-forest uses.

Measures to Achieve No-Net-Loss of Working Forests

WSSAF supports the use of a variety of measures by federal, state, and local governments, landowners, and individual citizens that can help achieve no-net-loss working forests in Washington including:

- Land use policies that recognize the multiple values of working forests and respect the rights and responsibilities of private and public forest landowners.
- Public funding and support for enforcing existing forest practices laws and regulations.
- Promote the use of alternative best management practices that address site specific conditions rather than one size fits all regulations.
- Adequate funding for sufficient and peer reviewed research that is not influenced with policy preferences, [d] upon which to base good forest policy and adaptive management.
- Expanded markets by promoting the use of wood for construction and energy.
- Develop markets for ecological services that improve timber and non-timber resource economics.
- Education programs that emphasize recognition that wood is a renewable natural resource.
- Public and institutional education programs that promote the benefits of working forests.
- Provide credit to working forest landowners for their current and additional capture of atmospheric carbon, storage of that carbon in wood products, and the reduction of carbon release by the substitution of wood for steel and concrete building materials.
- Promote the reduction of estate taxes on forest land to promote inner generational working forest management planning and consolidation of working forests.
- Federal and state forest taxation systems that encourage long-term investment in sustainable forest management and habitat restoration, and that discourage parcelization.
- Small forest landowner assistance programs, such as the American Tree Farm Program or Forest Stewardship Program that educate and provide assistance on how to maintain working forests.
- Champion the re-analysis of the Northwest Forest Plan and completion of individual forest plans in order to re-balance the social, economic, and ecological benefits and products on a national forest specific basis.
- Promote regeneration timber harvests in Collaborative Forest Landscape Restoration Programs. [e]
- Support state and federal direct payment and cost share incentive programs.
- ESA reform that removes the unintended litigious consequence of private citizen enforcement and serves to provide incentives that encourage the management of and for endangered species rather than making it a liability.

a USDA Technical Report PNW-GTR-800. Washington's Forest Resources 2002-2006.

b Washington Trust Land Transfer Program. July 2011

c Sutherland, D. Bare, B.B., 2007. The Future of Washington Forests.

d Lackey, R.T., 2007. Science, Scientists, and Policy Advocacy. Conservation Biology 21(1):12-17.

e Franklin, J.F. Johnson, K.N. 2012. A Restoration Framework for Federal Forests In the Pacific Northwest. Journal of Forestry 110(8):429-439.

This position statement was adopted by the Washington State SAF Executive Committee on June 25, 2013, and will be submitted for an approval vote of its general membership during the 2013 fall elections. This statement will expire on June 25, 2018, unless it is renewed, revised, or withdrawn prior to that date.

Supporting the development of a sustainable forest biomass energy industry
Position Statement of the Washington State Society of American Foresters

Position:
The Washington State Society of American Foresters supports the development of a sustainable forest biomass energy industry (direct combustion, pellets, gasification, liquid biofuels, and co-firing) to achieve the following ecological and economic benefits:

- Reduces loss of forest resources to pest and disease outbreaks,
- Reduces the risk of forest fires,
- Reduces site productivity loss from wildfires,
- Reduces the need for slash burning,
- Enhances and protects critical wildlife habitat,
- Prevents loss of forest site productivity by meeting and exceeding minimum state forest practices rules for retaining leave trees and down woody debris,
- Replaces foreign oil with local renewable fuel.
- Provides a renewable, carbon-neutral fuel source,
- Reduces domestic and industrial energy costs,
- Creates green and well paying jobs in rural communities,
- Helps to maintain a viable wood industry infrastructure,
- Helps to retain working forests threatened by alternative land use conversion,
- Provides forest landowners needed economic opportunities and alternatives for sustainable forest treatments,
- Encourage comprehensive studies (e.g.[1]) utilizing a life cycle assessment of the use of biomass energy.

Issue:
Several studies confirm that Washington has abundant, renewable, and underutilized forest biomass resources that hold great potential as a source of renewable energy[1,2]. Several other studies suggest that the risk of site productivity reduction is low.[3,4,5] Washington's Forest Practice rules provide both specific requirements that address site productivity and provide the Department of Natural Resources the authority to amend proposed practices that may impact long term site productivity. WSSAF encourages cooperative government and industry monitoring of biomass utilization to prevent environmental degradation of forest sites and community resources. As an emerging industry, the public needs to be aware that sustainable forest biomass utilization is good energy policy, good climate policy, and good forestry resource management.

Background:
As Washington's forests face the challenges arising from a changing climate, the risk of forest fires and the prevalence of forest pests and diseases are increasing. These risks are magnified when coupled with unmanaged forests and the buildup of forest biomass due to past fire exclusion. Currently, many forest health treatments are often left undone because economics don't support them. Encouraging sustainable use of forest biomass can provide a market for products that come from forest health treatments and conventional forestry operations. Supporting a Washington forest biomass-to-energy

industry will create markets for non-marketable wood and thereby reduce fuel loads, contribute to Washington's clean energy economy and create green jobs.

This position statement was adopted by the Washington State SAF Executive Committee on July 1, 2010, and approved by the WSSAF Executive Committee for vote by the general membership. The statement will expire July 1, 2015, unless after thorough review it is renewed by the Executive Committee.

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[1] University of Washington, Report to the Washington Legislature, *Wood to Energy in Washington: Imperatives, Opportunities, and Obstacles to Progress,* June 2009.

[2] Washington Department of Natural Resources, Forest Biomass Initiative.

[3] Miller, Richard 2001. *Assessing Management Effects on Pacific Northwest Forest Site Productivity: An Inventory and Evaluation of Research and Operational Sites.* National Council For Air and Stream Improvement Technical Bulletin 839.

[4] Vance, Eric 1998. *Agricultural Site Productivity: Principles Derived from Long-term Experiments and Their Implications for Managed Forests*. National Council For Air and Stream Improvement Technical Bulletin 766.

[5] Compton, J.E. and D.W.Cole. 1991. *Impact of harvest intensity on growth and nutrition of successive rotations of Douglas fir*. Pp 151-161. In W. J. Dyck and C. A. Mees, eds. Long-term field trials to assess environmental impacts of harvesting. FRI Bulletin 161. IEA/BE T6A6 Workshop. Forest Research Institute, Rotorura, New Zealand, February 1990.

This position statement was adopted by the Washington State SAF Executive Committee on August 1, 2010, and supported with 95 percent approval by member referendum in November 2010. This statement will expire August 1, 2015, unless after thorough review it is renewed by the Committee.

13-10

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

June 28, 2013

MEMORANDUM

TO: Forest Practices Board

FROM: Stephen Bernath, Forest Policy Lead
Department of Ecology

SUBJECT: Comments on the Forest Practices Project Rule Making

Thank you for the opportunity to comment on the rule package that fully integrates the hydraulic project rules into forest practices.

General Comments about the FPHP rules

Ecology wants to point out that the current hydraulic rules were last updated in 1994 and that many of the common practices on forest land have surpassed those practices, especially in the implementation of the Forests and Fish Report. We support the integration of the two sets of rules as they pertain to the forest environment and would like to acknowledge the huge amount of work it has taken for Board staff working with WDFW and other stakeholders to integrate these rule packages. Since the HPA code is not similar to the forest practices rules, there were a number of changes that were made to meld the two (e.g. use of bank full width).

Specific Comments

1. By legislative direction, this rule making is limited to merging the existing two rules. When the updated HPA rules come before the Board, Ecology will strongly encourage guidance that has been proposed in the Board Manual clarifying the use of fords to be pulled into the rule, particularly in light of the June 17th email from NOAA fisheries.

   Specifically, in WAC 222-24-040 fords should only be used when there is a dry stream channel during the term of use or on an exceptional basis when it can be shown to be the best practice for protecting public resources. Ecology acknowledges that section 222-24-041, states that fords are the last in preference in use for stream crossings.

   Ecology expects DNR to implement and perform compliance on fords as they do for other BMPs involving sediment.

2. All the new and amended sections in the forest practices rules integrating hydraulic projects have a nexus with water quality. Therefore, the following sections of the rules should have "*"s

by them. Subsequent to this rule making, Ecology will need to determine whether new or amended rules in the future will meet water quality requirements.

222-16-025,
222-12-050,
222-12-090,
222-16-050 (2)(a), (5) (a), (5)(s),
222-20-040
222-20-090
222-24-038
222-30-070(1)
222-50-020(4)

3. There are 3 sections of rule that need language changed regarding where the discharge of water or spoils should be placed to be consistent throughout the rules... please update the rules, to be worded as follows....Wastewater from project activities and water removed from the work areas shall be routed to an area above the 100 year flood level ~~landward of the bankfull width~~ to allow removal fine sediment and other contaminants through infiltration to the forest floor ~~prior to being discharged to typed waters~~.

   WACs to be amended – 222-16-025(h), 222-24-041 (4)(f) & (6)(i).

4. The phrase "within seven days of completion of the project" needs to be eliminated in WACs 222-24-041(4)(c & h). This appears to allow erosion to be enabled during and immediately after construction.

5. Ecology supports Option 1 of the definition of bank full width. Under forests and fish this is the definition we went to because it is a geomorphic term, not a term derived from law. In addition, Ecology believes the governing characteristic that will determine whether a culvert is large enough is based on it's ability to pass the 100 year flood flow plus anticipated debris for that drainage.

6. Ecology also supports Option 1 for the definition of forest practices hydraulic project. Water crossings on type N have always been subject to the potential of an HPA, particularly those that can influence the use, diversion, obstruction or change the natural flow or bed of S & F waters or can impact fish hatchery intakes.

Finally, there are many instances in these rules where readability becomes difficult because of numbers being spelled out. I would respectfully suggest the rules are more usable in number form.

Please let me know if you have any questions or concerns.

Cc: Forest Practice Board Liaisons

Forests and Fish Policy Leads

13-11

FORESTS AND FISH CONSERVATION CAUCUS

c/o Washington Forest Law Center
(Coordinating Organization)
615 Second Avenue, Ste 360
Seattle, WA 98104

Tel: (206) 223-4088
Fax: (206) 223-4280

Submitted By Chris Mendoza 27, June, 2013
On Behalf of the Conservation Caucus
Public Hearing @ NRB Room 172

BY ELECTRONIC MAIL

20 February 2013

Lori Preuss, Rules Coordinator
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
Email: Lori.preuss@dfw.wa.gov

Re: Conservation Caucus Comments on proposed WAC 222-110-085 expressing concerns about Process for WDFW Concurrence Reviews of Forest Practices Hydraulic Projects

Dear Ms. Preuss:

The Conservation Caucus has been following with interest the process of transferring permitting authority for forest practices applications associated with hydraulic projects ("forest practices hydraulic projects" or "FPHPs") from WDFW to WDNR. The Caucus is particularly concerned about three overarching issues:

1) *Maintenance of WDFW Capacity* to effectively review those projects it is statutorily obligated to review (concurrence reviews) as well as projects within its authority and discretion to review (discretionary reviews). It is critical that DFW's capacity is adequately maintained even though HPA permit authority is being transferred to DNR, which will now be a function of the funding made available under an interagency contract with DNR as specified in the 12/20/2012 Memorandum of Agreement. This is not an issue that is within the purview of the administrative rulemakings currently underway, but it is a critical part of maintaining fish protection.

2) Full expression of fish protection standards in the Forest Practices Rules: Statutory direction is clear that substantive fish protection standards may not be weakened as a result of integration. We look forward with interest to DNR's revision of the Forest Practices Rules and Board Manual to fully include the fish protection standards of the hydraulic code and maintain WDFW's level of participation in the review of FPAs involving hydraulic projects. We plan to comment on the rules and guidance as soon they are made publicly available in March 2013.

3) *Procedural parity:* The interagency procedures resulting from integration should, to the

maximum extent possible, preserve or improve upon WDFW's opportunity to determine consistency with fish protection standards and to provide meaningful input on FPHPs. The WDFW's draft rule – WAC 220-110-085 - on course for adoption in March 2013, deals entirely with the procedures applicable to concurrence reviews. This letter is being submitted to WDFW in comment on these rules.

- **30-day WDFW consistency determination period including completeness review drastically reduces WDFW review time from current rules, increasing likelihood of non-concurrence**

Under the proposed WDFW rules, 30 days of total approval period available to DNR (usually 60 days) are allocated to completion of WDFW's concurrence review, a timeline which begins when WDFW "receives notification from DNR that a FPA includes one or more hydraulic projects" subject to the concurrence review requirement. Within 5 days, WDFW agrees to determine whether the application is complete – or as soon as reasonably practicable thereafter. However, regardless of when the application is determined to be complete by WDFW, it must transmit its concurrence/non-concurrence decision in writing within 30 days to DNR.

This is a significant change from current procedure, and seems likely to diminish WDFW's ability to fully evaluate FPHPAs. Currently, WDFW HPA review timelines are set on a more rolling basis under WAC 220-110-030 (4)-(10) which gives WDFW a 45 day review period that does not begin until an application is deemed complete and provides a number of circumstances under which the review period may be suspended. The current rule encourages the WDFW to "strive to issue HPAs in less than 30 days" but does not require it. WAC 222-110-030(4).

The proposed rule reduces the review period from 45 days and gives WDFW a hard timeline of 30 days. In addition to being two weeks shorter than the existing review period, the 5-day completeness review is included in the 30-day review – effectively reducing the review period to 25 days or less.

- **Consider changing the rules to start the 30-day WDFW review clock after the 5-day completeness determination is made**

It does appear that statutorily mandated approval timelines exist constraining the time WDFW can take to conduct concurrence reviews. According to 77.55.631(3) RCW the concurrence review process must allow WDFW "up to thirty days to review forest practices hydraulic projects." This provision indicates that the proposed 30-day period is the maximum period statute allows to be allocated to WDFW for concurrence review. However, as noted below, it may still be consistent with this direction to allow additional time for WDFW to make its determination that an application is complete, so that the formal review period does not start until after an application is deemed complete for purposes of WDFW review.

It is not clear to us that the Forest Practices statutes prevent the allowance of a 5-day completeness determination period. It is true that approval timelines for a FPHPA is constrained by the current provisions of the Forest Practices Act. The Act generally requires final DNR action on Forest Practices Application within 30 days, or an application will be deemed approved but for concurrence reviews, additional time is allowed. Under 76.09.050 (1)(d) RCW, Class III Forest Practices applications must be approved "[w]ithin 30 days of the completion of concurrence review" where it is required. For Class IV permits, applications must also generally be approved within 30 days of

concurrence decisions unless a detailed impact statement is required in which case an additional 60 days is allowed. 76.09.050(1)(d) RCW.

However, although current statutory language both restricts the WDFW review period to 30 days and requires final approval by DNR within 30 days of a concurrence decision, it appears to us that there is no prohibition on starting the 30-day WDFW review clock after a 5-day or other reasonable completeness determination period at DFW. Doing this would effectively give WDFW another workweek to ensure that all necessary information is in hand -- time we believe is necessary for many of the more complex projects. While this may mean that DNR will have less than 30 days from DFW's concurrence determination to issue a final decision on the FPA (if a 60-day hard timeline on the overall approval period is required), this still is consistent with the Forest Practices Act which only states an upper limit on how long DNR may take once WDFW has acted. DNR is allowed to take less than 30 days to finalize its decision after it receives a DFW concurrence.

Even if the review period were effectively increased by the five day review period (as we believe it should be), the review period will only be adequate if cooperation continues on completeness criteria, board manual guidance and training – all key interagency actions specified in the MOA. *See* MOA at 5-6 (agreement to jointly determine what will constitute a complete application and how information will be shared to develop and implement a training program).

In sum, we are extremely concerned that the proposed 30-day concurrence review timeline is too short and that despite promises to increase pre-application conferencing, guidance, training etc., the shorter review period will result in an unsatisfactory number of non-concurrences due to lack of time to conduct the necessary evaluation and development of recommendations. However, if WDFW is not able to effectively increase its review period by adding the completeness determination time, full implementation of all of these measures will be even more critical to avoid remediable non-concurrences.

Overall, we believe that the compressed 30 day concurrence review timeline is likely to impair the ability of WDFW to effectively participate in review of forest practices hydraulic applications, resulting in a higher-than-previous number of non-concurrences from WDFW leading to disapprovals of applications that could have been approved with additional time to develop permit conditions, conduct site visits etc. This outcome would frustrate the intent of integration by the Washington State legislature to streamline FPA approvals and is an outcome that should be avoided.

Respectfully submitted,

Mary Scurlock
For the Conservation Caucus

13-13

WASHINGTON FOREST PROTECTION ASSOCIATION
724 Columbia St NW, Suite 250
Olympia, WA 98501
Phone: 360-352-1500
Fax: 360-352-4621

June 28, 2013

Re: Proposed Rule Making for Forest Practices Hydraulic Projects and Biomass Definition

Dear Chairman Everett and Members of the Forest Practices Board:

The Washington Forest Protection Association would like to thank the Board for this opportunity to comment on the proposed rule making for integrating hydraulic projects into forest practices rules. We continue to believe that work to implement Second Engrossed Substitute Senate Bill 6406 (2ESSB 6406) is going remarkably well. Staffs of the Department of Natural Resources (DNR) and Department of Fish and Wildlife (DFW) have been attentive to our earlier comments and the rule process continues at a pace to meet the December 31, 2013 completion date. Work on the Forest Practices Hydraulic Project board manual has continued with the able leadership of Forest Practices Division staff and collaboration among Ecology, Fish and Wildlife, tribes, conservation caucus and landowners. We expect a board manual product for the Board to accept as the rule moves toward approval.

Our earlier May 13th comments to the Board contained two major points of concern with the proposal that was presented to the Board at the May 14th meeting. We appreciate the Board's modifications to the proposal in the motion that advanced the rule proposal to formal rulemaking with a CR 102. The revised proposal places options in front of the Board on the two topics we are most concerned about: insertion of the term "*bankfull width*" in place of "*ordinary high water line*" in rule text incorporated from Hydraulic Code rules, and the definition of a *forest practices hydraulic project*.

In regard to the measurements of stream width (*bankfull width* vs. *ordinary high water line*); we cannot support either option. In our discussion below we present the case for retaining the Hydraulic Code rule term, *ordinary high water line*, in the Forest Practices rule language where the Hydraulic Code rule language is incorporated directly from DFW rules.

Regarding the definition of a *forest practices hydraulic project*, WFPA supports Option 2 which limits the definition to projects conducted in fish bearing waters.

In addition to the comments on the two issues presented in the body of this letter we have included an attachment containing other comments and recommendations for changes to the proposed rule.

Replacement of the term "ordinary high water line" with "bankfull width." WFPA does not support replacing the term "ordinary high water line" with the term "bankfull width" as outlined in Option 1. We also do not support Option 2, which merely adds the definition of "ordinary high water line" to the definition of "bankfull width" specifically for forest practices hydraulic project (FPHP) construction. Neither option meets the requirements of 2ESSB 6406, the legislation which directs the integration of the Hydraulic Code Rules into the Forest practices rules. In each place where the phrase

"bankfull width" has been inserted to replace "ordinary high water line" in language copied from Hydraulic Code rules, it must to be removed and "ordinary high water line" reinserted.

Paragraph 3(a) of Section 203 of 2ESSB 6406 reads as follows: "

> *"The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date under this section, that are applicable to activities regulated under the forest practices rules." (emphasis added).*

This is plain and unambiguous language that should be followed as written. The statute requires the Forest Practices Board to incorporate into the forest practices rules those fish protection standards found in existing DFW rules that apply to activities regulated under the forest practices rules. The definition of "ordinary high water line" is a fundamental rule for determining whether an activity (including a forest practice) is a hydraulic project subject to regulation under chapter 77.55 RCW. In fact, in Section 101(12) of the act the legislature "re-enacted" the definition of "ordinary high water line," suggesting an intent to preserve this fundamental jurisdictional threshold in the implementation of 2ESSB 6406. Accordingly, the forest practices rules adopted in accordance 2ESSB 6406 should incorporate the term "ordinary high water line" and apply it to forest practices hydraulic projects in the same manner that it is applied to forest practices under the existing hydraulic project regulations in WAC 220-110.

Furthermore, Paragraph 3(a) of Section 203, 2ESSB 6406 also includes language providing that the Forest Practices Board can simply incorporate by referencing those portions of WAC 220-10 applicable to forest practices. This strongly suggests a legislative intent that the exact language of the existing, applicable rules in WAC 220-110 be incorporated into forest practices regulations without modification.

There has been some speculation that because Section 202(2)(b) of 2ESSB 6406 used the term "bankfull width" as applied to certain culvert and bridge installations and repairs, there was some intent in the legislation to change the language in regard to jurisdictional threshold in the implementation of 2ESSB 6406. Section 202(2)(b) of the bill is specific to identifying conditions for implementing the Department of Fish and Wildlife concurrence process – it is intended only as a screen to sort out which FPHPs would go through the concurrence process and which would not. This section is not a directed redefinition of a hydraulic project.

The Forest Practices Board's Notice of Proposed Rule Making (May 20, 2013) includes language consistent with a strict legislative requirement to incorporate the applicable portions of WAC 220-110 without expansion, modification, or change. The board writes:

> *"These rules fulfill the directive in 2ESSB 6406 (2012) to incorporate into the forest practices rules (Title 222 WAC) the fish protection standards from the hydraulic code rules (chapter 220-110 WAC) that are applicable to activities regulated under the forest practices rules."*

The Board states that the proposed rules are based on implementation of the directive in 2ESSB 6406 and doesn't say anything about a broader exercise of discretion to fulfill the purposes and policies of RCW 76.09.010 under the Board's general authority. If the Board did want to change the application of the Hydraulic Code with this integration, its action would not be exempt from SEPA under Section 213 of 2ESSB 6406.

Not-with-standing the above discussion, WFPA expects <u>and supports</u> the implementation of the Hydraulic Code under DNR permitting and regulatory oversight to provide the same level of fish protection that is achieved under the current system of Hydraulic Code rules administered by the DFW. Making the Board aware of our concerns about the ordinary high water line vs. bankfull width

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language is intended to preserve fish life protection as it is applied today to state waters under the Code.

The definition for Forest Practices Hydraulic Project

WFPA strongly recommend Option B for the definition of a Forest Practices Hydraulic Project (FPHP). Following the requirement in 2ESSB 6406 that direct the Board shall incorporate applicable Hydraulic Code rules as they existed on the effective date of the law, and the specific direction in 2ESSB 6406 Section 216:

> *"Nothing in this act affects any rules processes or procedures of the department of natural resources or the department of fish and wildlife existing on the effective date of this section that provide for regulatory integration for hydraulic projects and forest practices for projects in nonfish-bearing waters."*

Forest practices rules for Type N Waters should not be affected by this rule change.

This position is further supported by current Hydraulic code rules. Hydraulic Code measures for the protection of Type N, non-fish waters, were integrated into forest practices rules in 2001. There is no need to further modify the forest practices rules for these waters. The Fish and Wildlife Commission recognizes this earlier integration in the current Hydraulic Code rules. Section 220-110-035(7) of those rules states:

> *"Based on the fish protection measures contained in. . . (forest practices rules and board manual) . . ., forest practices . . . conducted under an approved forest practices application or notification issued by the department of natural resources, and conducted in or across type Np or Ns waters. . .do not require an HPA." (WAC citations omitted)*

Furthermore, the Director of the Department of Fish and Wildlife recently recognize that the intent of the integration process was specific to Type S and F Waters when he adopted WAC 220-110-085 as required by 2ESSB 6406 to establish the WDFW procedures for the concurrence process. Sub-section (1) of that rule notes the earlier integration of fish protection measures for projects in non-fish streams into forest practices rules and goes on to explain that:

> *"In April 2012, the legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment requires integration of hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land. (Emphases added)*

The term "forest practices hydraulic project" appears several times in the draft rule. Including Type N Waters in the definition affects the rules, processes and procedures of the Department of Natural Resources for projects in nonfish-bearing waters as those rules existed when 2ESSB 6406 went into effect last July. Thus, Option 1 is not consistent with Section 216 of the legislation.

Listed below are sections in the proposed rule that increase process and/or restriction on nonfish-bearing waters if Type N Waters are included in the definition of FPHPs

New Section WAC 222-12-037 (3). Applications that include forest practices hydraulic projects.

- Landowners will be required to "demonstrate" that common general provision designed to protect fish life do not apply to most Type Np and virtually all Type Ns Waters present in their Forest Practices Application activity area.

New Section WAC 222-12-037 (4). Applications that include forest practices hydraulic projects.

- Projects affecting only Type N waters may be subject to additional conditioning beyond current rules for non-fish waters.

WAC 222-16-010. The definition of fish protection standards.

- All Type N waters will be subject to fish protection standards that are new to this rule.

New Section WAC 222-16-025(3)(c). Fish protection standards for forest practices hydraulic projects.

- Potentially requires mitigation for FPHP on Type N Waters, thus changing current non-fish stream rules.

New Section WAC 222-16-025(4)(c) and (d). Fish protection standards for forest practices hydraulic projects.

- Additional stream bank protection measures applied as general conditions to Type N Waters that exceed current Equipment Limitation Zone requirements for these waters.

WAC 222-16-050 (4). Class II of forest practices.

- Eliminates the opportunity for a Class II notification renewal of any forest practices application or notification that involves any typed water. This affects both renewals of FPAs that include a FPHP on fish-barring and nonfish-bearing streams. Currently most FPA can be renewed with a notification.
- Eliminates all FPHPs from Class II, including many involving Type N Waters that would currently be classified as Class II and conducted under a notification.
    - Eliminates the current opportunity to build fire trails or extend small gravel pits involving Type Ns Waters under a Class II notification.
    - Eliminates the current opportunity to conduct certain salvage logging that involves Type Ns Waters under a Class II notification.
    - Removes the opportunity to conduct certain partial cut harvests and certain salvage operation of dead or dying timber under a Class II notification.
    - Eliminates any opportunity to harvest 40 acres or less with a Class II notification when the harvest area includes any Type Np or Ns waters.
    - Removes the opportunity to build 600 feet or less or road with a Class II notification when any there is a Type Ns water within the clearing limits of the road construction.
    - Eliminates the current opportunity to conduct any timber harvest, salvage or road construction as a Class II forest practice when the operation is within urban growth areas designated under authority of the Growth Management Act when the forest practice involves any typed Water.

WAC 222-16-050 (5). Class III of forest practices.

- All forest practices involving any typed water including all those involving Type N , nonfish-barring water within the boundary of the activity will be classified as Class III forest practices requiring an application. Currently, only Type S, F and some Type Np Waters are restricted to Class III forest practices applications.

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WAC 222-20-040(1) Approval Conditions.

- FPHPs including those involving Type N Waters within the boundary of the activity are added to the list of forest practices activities that may require the landowner or operator to notify DNR two business days before commencement of actual operations. Currently this notification is required only for forest practices activities which, because of soil conditions, proximity to water or other unusual conditions as determined by the department.

WAC 222-20-090(2), WAC 222-24-038 and WAC 222-30-020. Pre-Application Consultation.

- Recommendations for consultation with DFW will extend to forest practices applications that include activities affecting only nonfish-bearing waters. For some landowners who do not often carry out forest practices on their land, this recommendation will increase the effort required to submit an FPA and unnecessarily increase the work load for DFW.

In summary, including Type N Waters in the definition of a FPHP goes against the legislative requirement that the fish-barring water integration process not affect the current regulation of non-fish bearing waters. Because the term "forest practice hydraulic project" is used repeatedly in the proposed rule, it is critical that nonfish-bearing waters, Type N, be removed from the definition of a FPHP.

The easiest way to resolve this issue and prevent this rule change from affecting nonfish-bearing waters as required by 2ESSB 6406 is to adopt Option 2 for the definition of a forest practices hydraulic project:

> *"Forest practices hydraulic project" means a forest practices activity that includes the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any Type S or F Water."*

I have attached a list of other important issues that WFPA has with the FPHP rule proposal. We believe that all the issues we have raised can be resolved with additional staff consideration and stakeholder discussion before the rule comes before the Board in August for a final action. Nothing in these comments should be interpreted as a change in WFPA's support for timely implementation of 2ESSB 6406, and our continued commitment to working with the agencies and stakeholders to protect fish life while completing the integration of Hydraulic Code rules into Forest Practices.

Finally, WFPA participated with other stakeholders in the development of the change to the biomass definition. We support the rule language. In general, WFPA believe that promoting use of wood for energy is one way that federal, state, and local governments, landowners, and individual citizens that can help achieve no-net-loss working forests in Washington.

Thank you for your consideration.

Sincerely,

Karen Terwilleger
Washington Forest Protection Association
Senior Director of Forest and Environmental Policy

more

Attachment to Washington Forest Protection Association Comment Letter on Proposed rule Making for Forest Practices Hydraulic Projects Dated June 28, 2013

Replacing the term "ordinary high water line" with "bankfull width." In each place where the phrase "bankfull width" has been inserted to replace "ordinary high water line" in language copied from Hydraulic Code rules, it should be removed and "ordinary high water line" reinserted.

222-16-025(4)(e)

222-16-025(4)(f)

222-16-025(4)(h)

222-24-041(1)

222-24-041(2)

222-24-041(4)(a)

222-24-41(5)(a) Also see the comment specific to this subsection below

222-24-046(2)
In addition, remove the term "bankfull width" from 222-24-041(6)(b)

222-12-050 (5). In emergency action.

The only change to this section should be the replacement of *"approval"* with *"consultation"*. Neither the current language in the Hydraulic Code (HC) rules nor 2ESSB 6406 (SB 6406) supports replacement of the existing language, *"in the bed of the stream,"* with *"that could affect the bed or flow"*.

New Section222-16-025 (4) - (b), (e), (i) and (j). Fish protection standards for forest practices hydraulic projects.

Where applicable, these provisions are general BMPs in forest practices around water and will appear in the manual. But SB 6406 was specific about what HC rule provisions are to be incorporated into forest practices. SB 6406, Section 203 (3) (a) requires the board to:

> *"incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date of this section, **that are applicable to activities regulated under the forest practices rules**"* (emphasis added).

(4)(b). The only sections of the current HC rules where this language appears are as follows:

- 220-110-060 - Construction of freshwater docks, piers and floats and the driving or removal of piling;
- 220-110-130 Dredging in freshwater areas;
- 220-110-190 Water diversions;
- 220-110-201 Mineral prospecting without timing restrictions;
- 220-110-202 Mineral prospecting with timing restrictions;
- 220-110-270 Common saltwater technical provisions;
- 220-110-310 Utility lines;
- 220-110-320 Dredging in saltwater areas; and

more

- Various regulations for aquatic plant control

Although the language in (4)(b) is a reasonable best management practice, by its absence from all HC rule sections that do apply to forest practice rules, it should not be added as a "*shall apply*" to all forest practices hydraulic projects.

(4)(e). Again, although this bullet is a reasonable best management practice, this language is not included in any section of the current Hydraulic Code applicable to forest practice activities regulated under forest practice rules and therefore should not be included among the general conditions that "*shall apply to any forest practices hydraulic project*". It has been taken from gravel removal (mining), mineral prospecting and aquatic plant and weed removal sections of HC rules.

(4)(i). Again, a reasonable best management practice but not applicable to activities generally regulated under forest practice rules and therefore should not be a general condition that shall apply to any forest practices hydraulic project. This language appears in only one section of the HC rules: 220-110-100 - Conduit crossing.

(4)(j). Again this language is not included in a single section of the Hydraulic Code that is applicable to activities regulated under forest practice rules and should not be included as a general condition for any forest practices hydraulic project.

222-16-025 (4)(d). The last sentence "*Equipment shall not enter or operate within the wetted perimeter of a stream*" should be removed. Concerns regarding siltation in construction of crossing structures in Type N Waters is covered in 222-24-042(g) and does not need to be addressed here. In the body of our comment letter WFPA presents the case for adopting the Option 2 under the definition of "Forest practices hydraulic project." Whether or not the definition of a forest practices hydraulic project includes Type N Water, the legislation that these rule are intended to implement clearly states nothing in the act (2ESSB 6406) was to affect the rules currently in place for forest practices in nonfish-bearing waters. If Type N Waters remains in the definition of a forest practices hydraulic project, this general provision should be restricted to fish-bearing waters.

222-24-010(2).

The phrase "*free and unimpeded passage*" should not be added to this first bullet under 222-24-010(2). The current language, *"Providing for fish passage at all life stages,"* should be retained. Hydraulic Code rule, WAC 220-110-070, Water crossing structure, states: "*In fish bearing waters, bridges are preferred as water crossing structures by the department in order to ensure free and unimpeded fish passage for adult and juvenile fishes and preserve spawning and rearing habitat . . .*" As used there, the phrase *"free and unimpeded fish passage"* is a description of what can be achieved with the use of a bridge as a water crossing structure. This phrase does not appear anywhere else in the HC rules and it is not specified nor is it implied that it is a regulatory requirement. WAC 220-110-070 (3)(a) states: In fish bearing waters or waters upstream of a fish passage barrier (which can reasonably be expected to be corrected, and if corrected, fish presence would be reestablished), culverts shall be designed and installed so as not to impede fish passage. Culverts shall only be approved for installation in spawning areas where full replacement of impacted habitat is provided by the applicant.

222-24-020 (6)(d).

As above, the HC rule language "*Design stream crossings in Type S and F Waters so as not to impede fish passage at any life stage*" should be followed.

222-24-020(22)(c).

more

We suggest that this should read "*Detailed site plans and designs for bridges and fish passage culverts or other complex elements of the proposal;"* in order to avoid adding unnecessary forest practices requirements to projects involving non-fish streams.

222-24-041(2).

We suggest returning to the language in the earlier draft that more closely follows Hydraulic Code rule language in 220-110-070 (1)(f) & (2)(f) & (3)(b)(ii)(F)(i). The language in the current draft eliminates any judgment in determining what activities require a Class III FPA. In the HC rule language, maintenance is separated from construction and structural work. The HC rules for maintenance include the phrase *"where there is potential for wastage of paint, sandblasting material, sediments, or bridge parts (to enter) into the water."* This offers an opportunity for judgment for minor maintenance like spiking down a plank or removing dirt from the surface of a concrete bridge.

222-24-041(4(c).

Remove the second to the last sentence. It is the same as 6(d).

222-24-041(5)(a).

The reference to WAC 222-16-010 and bankfull width should be deleted. There is no definition of *"bankfull width for culvert design"* in this version of the FPHP rules. The Forest Practices rule language on temporary culvert installation should follow the Hydraulic Code rule temporary culvert installation language: *"Where fish passage is a concern, temporary culverts shall be installed according to an approved design to provide adequate fish passage."*

222-24-041(5)(c).

The Forest Practices rule language on temporary culvert installation should follow the Hydraulic Code rule temporary culvert installation language 220-110-070 (2)(c): *"at a peak flow expected to occur once in 100 years during the season of installation."*

222-24-041(6)(b).

There is no requirement or basis in the Hydraulic Code, Hydraulic Code rules, Forest Practices or SB 6406, for adding *"based on bankfull width"* to this sentence. In order to following HC Code rule language, the reference to design based on bankfull width should be removed and this sentence should read, from 220-110-070(3)(b)*"To facilitate fish passage, culverts shall be designed to the following standards:"*

222-24-041(6)(b)(ii)(A).

We recognize that this is a Hydraulic Code rule language, but (6)(b)(ii), referencing Table 1 Line 2, cannot be implemented in intermittent fish streams as written because it requires a minimum low flow of water when these streams are dry at low flow. There does not seem to be a way out of this conundrum. We would like to see DNR, DFW and landowners get together to fix this problem during the CR 102 rule comment period.

222-30-021(1)(c)(iii)(C). Large woody debris in-channel placement strategy

While 222-30-021(1)(c)(iii)(A) indicates that a landowner *"**may** design a LWD placement plan for department approval prior to submitting a forest practices application"*, this bullet (C) does not use *"may," but rather says "the approved plan **must** be included" (emphasis added).* This bullet (C)

more

should be reworded to require that a plan be submitted with the FPA in order for the application to be considered complete.**222-30-022(1)(c)(ii).**
The last sentence should be reworded to state that *"a complete forest practices application must include a LWD placement plan."*

222-30-050(a).

The existing language in the last sentence should also be changed to replace *"comply with"* with *"incorporate"*, as per WAC 220-110-160. (Line 47, Page 55 April 23rd proposal to the Board)

222-30-050(a)(ii).

Add *". . . are specifically approved <u>to be removed</u> by the department."*

222-30-050(a)(iii).
Use the same language as in WAC 220-110-160 (5): *" If limbs or other small debris enter the watercourse, with identifiable bed or banks, as a result of felling and yarding of timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into the watercourse and placed outside the 50-year flood plain. Limbs or other small debris shall be removed from dry watercourses prior to the normal onset of high flows. Large woody material which was in place prior to felling and yarding of timber shall not be disturbed."* The new language says 'watercourse' & '100 yr flood plain"

Section 222-30-050, Felling a bucking and Section 222-60-060 Cable yarding.
In the body of our comment letter, WFPA presents the case for adopting Option 2 under the definition of "Forest practices hydraulic project." Whether or not the definition of a forest practices hydraulic project includes Type N Water, the legislation that these rule are intended to implement clearly states nothing in the act (2ESSB 6406, per section 216) is to affect the rules currently in place for forest practices in nonfish-bearing waters. The FPHP rule integration in progress must not change the current intent, language or interpretation of forest practice rules for timber harvest in, or affecting Type N Waters.

Section 222-30-O50, felling and bucking, places the language integrated from the HC rules in a series of sub-paragraphs, (i) through (iv) under 050(1). Sub-section (1) is specific to Type S and F Waters and their RMZ core zones, sensitive sites along Type Np waters as identified by rule, and A and B wetlands. Sub-section 050(2) requires compliance with (i) through (iv) in 050(1) but limits those requirements to S and F Waters only.

WFPA supports the integration approach in 222-30-050. (It's appropriate to include Type Np Water sensitive sites in the felling and bucking restriction since these sensitive sites are designated in rule as no harvest areas.) With the edits we suggested above, the approach in 222-30-050 is the correct way to incorporate the HC provision timber harvest into forest practices.

On the other hand, Section 222-30-060, cable yarding , takes a different approach. Several HC provision are incorporated as separate sub-sections in parallel to, rather than within the sub-section (1) that is specific to Type S and F Waters. Proposed sub-sections (5), (7), (8) and (9) are not specific to S and F waters. Sub-section (6) includes flowing water along with Type S and F Water, presumably including some Type Np Waters. Sub-section (9) is general enough to apply to all waters under current forest practices rules. We urge the Board to change the language and construction of WAC 222-30-060 as recommended below.

more

222-30-060(5) should use the same language as in WAC 220-110-160 (2) but should specify Type s and F Waters :

> *"Trees or logs which enter Type S and F Waters, with identifiable bed or banks, during yarding shall remain where they enter unless parts or all of the trees or logs are specifically approved to be removed by the department."*

222-30-060(6). Drop the reference to flowing water.

222-30-060(7). The text of sub-section (7) should be moved to sub-section (1) where it would introduce the yarding corridor language in current rules. (At the 9th line of the body of sub-section (1) in the CR 102 text following the new language "forest practice application." Or in the same location, line 6 of page 57, in the April 23rd proposal to the Forest Practices Board).

222-30-060(8).

Use the same language as in WAC 220-110-160 (5):
"If limbs or other small debris enter Type S or F Waters, with identifiable bed or banks, as a result of yarding timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into such typed waters and placed outside the 50-year flood plain. Limbs or other small debris shall be removed from dry portions of Type S and F watercourses prior to the normal onset of high flows. Large woody material which was in place prior to yarding timber shall not be disturbed." It is important to note that the new language changes the 220-110-160(5) language from the '50 yr floodplain' to the 100 yr floodplain'.

6/28/2013
Stillaguamish Tribe comments on Forest Practice Hydraulic Project rule making.
Prepared by Scott Rockwell- Forest & Fish Biologist, Stillaguamish Tribe Natural Resources Department.

- Inclusion of Bankfull Width definition vs. Ordinary High Water Mark
    - Bankfull Width should be the technical definition associated with the new Forest Practice Hydraulic Project rule:
        - Depending upon the confinement and morphology of a given stream, there can be differences in how bankfull width and ordinary high water mark are delineated. Though the two indicators represent some of the same channel processes, they may not capture all of the same channel processes
            - This may result in a difference in resource protection.
            - This may lead to confusion and different interpretations among regulators, the regulated community and TFW cooperators.
        - Bankfull width is the channel indicator included in the Forest & Fish Report, and is the channel indicator evaluated in the Forest Practices HCP, therefore it should be the technical definition included in this new regulation.
        - SB 6406 directed the further integration of the State's Hydraulic Rules into the State's Forest Practices Rules, it did not direct a complete replication of the Hydraulic Rules. There should be some accommodation within the new regulation for utilizing currently applied regulatory language and technical definitions of the Forest Practices Rules.

Thank you very much for your consideration.
Best regards,
-SR

Scott Rockwell - Forest & Fish Biologist
Stillaguamish Tribe Natural Resources Department
srockwell@stillaguamish.com
360.722.6571
P.O. Box 277
Arlington WA 98223

13-16

SQUAXIN ISLAND TRIBE

June 28, 2013

To Whom It May Concern,

The Squaxin Island Tribe (The Tribe) has reviewed the proposed rule-language changes submitted by Washington State Department of Natural Resources for bringing hydraulic permits into the Forest Practices Rules (the Rules). The following document is being submitted as formal comment in response to the Forest Practices Hydraulic Project (2ESSB) 6406.

Bankfull Width Definition

The Tribe does not support the Bankfull Width (BFW) Option 2 definition for conducting Forest Practices Hydraulic Projects (FPHP). Use of Ordinary High Water Mark (OHWM) as a metric for conducting Hydraulic Projects is not consistent with any other Forest Practices Rules pertaining to typed waters (including lakes, ponds and wetlands). Furthermore, the definition of BFW currently being used in Forest Practices, as defined in Option 1, is what was agreed to by the involved caucuses during the original rule-making process. During the rule-making process, the best available science was consulted for the conclusion to use BFW, and it should remain as such until scientifically proven otherwise. Additionally, making an exception to the accepted definition of BFW (i.e. utilizing the Option 2 definition) for conducting Forest Practices Hydraulic Projects will potentially cause confusion within the interpretation of the rules and lead to resource damage.

Forest Practices Hydraulic Project Definition

The Tribe does not support the Option2 definition of Forest Practices Hydraulic Project. While the Tribe believes that not all type N waters need a Forest Practices Hydraulic Project permit/condition within a Forest Practices Application, there are circumstances where activities that "use, divert, obstruct or change the natural flow or bed" of a type N water would have significant impacts on downstream fish bearing waters. The Tribe believes a definition that conditions when the use of a FPHP is necessary when conducting activities within Type N waters would be more appropriate than the two options currently provided.

If you have an questions or comments please contact me at (360) 432-3818 or email at szaniewski@squaxin.us

Sincerely,

Sarah R Zaniewski, M.E.S; TFW/Habitat Biologist
Squaxin Island Tribe Natural Resources Department

13-17

Stevenson Land Company
(dba: SDS Lumber Co)

P.O. Box 266
Bingen, WA 98605
(509) 493-2155 phone
(509) 493-2535-fax

Jeremy Grose
Inventory Forester

June 28, 2013

Re: Proposed Rule Making for Forest Practices Hydraulic Projects

Dear Forest Practices Board:

Please review the following comments on the proposed rule making for integrating hydraulic projects into forest practices rules (Senate Bill 6406). These issues are very important to the daily business of our company and could impact the good working relationship between our company and WDNR and WDFW. Adoption of certain Options, especially related to hydraulic projects, could have wide-ranging and unnecessary impacts on the process used to permit projects in non-fish bearing waters.

There are two major points of concern with 2ESSB 6406. The recently revised proposal (May 2013) places options in front of the Board on the two topics we are most concerned about: insertion of the term "*bankfull width*" in place of "*ordinary high water line*" in rule text incorporated from Hydraulic Code rules, and the definition of a *forest practices hydraulic project*.

In regard to the discussion on stream width measurements (*bankfull width* vs. *ordinary high water line*); we cannot support Option 1 or 2. Below we present the case for retaining the Hydraulic Code rule term, *ordinary high water line*, in the Forest Practices rule language where the Hydraulic Code rule language is incorporated directly from DFW rules.

Regarding the definition of a *forest practices hydraulic project*, SDS Lumber supports Option 2 which limits the definition to projects conducted in **fish bearing waters**. Option 2 reflects the process that has been successfully implemented in practice the past several years. DFW, DNR and private landowners have worked through the HPA process with positive outcomes for landowners and the water resource of Washington.

Please see the detailed descriptions and background of both these issues below:

Replacement of the term "ordinary high water line" with "bankfull width." We *do not support* replacing the term "ordinary high water line" with the term "bankfull width" as outlined in Option 1. We also *do not support* Option 2, which merely adds the definition of "ordinary high water line" to the definition of "bankfull width" specifically for forest practices hydraulic project (FPHP) construction. Neither option meets the requirements of 2ESSB 6406, the legislation which directs the integration of the

Stevenson Land Company
(dba: SDS Lumber Co)

P.O. Box 266
Bingen, WA 98605
(509) 493-2155 phone
(509) 493-2535-fax

Jeremy Grose
Inventory Forester

Hydraulic Code Rules into the Forest practices rules. In each place where the phrase "bankfull width" has been inserted to replace "ordinary high water line" in language copied from Hydraulic Code rules, it should to be removed and "ordinary high water line" reinserted.

Paragraph 3(a) of Section 203 of 2ESSB 6406 reads as follows: "

> *"The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date under this section, that are applicable to activities regulated under the forest practices rules." (emphasis added).*

This is plain and unambiguous language that should be followed as written. The statute requires the Forest Practices Board to incorporate into the forest practices rules those fish protection standards found in existing DFW rules that apply to activities regulated under the forest practices rules. The definition of "ordinary high water line" is a fundamental rule for determining whether an activity (including a forest practice) is a hydraulic project subject to regulation under chapter 77.55 RCW. In fact, in Section 101(12) of the act the legislature "re-enacted" the definition of "ordinary high water line," suggesting an intent to preserve this fundamental jurisdictional threshold in the implementation of 2ESSB 6406. Accordingly, the forest practices rules adopted in accordance 2ESSB 6406 should incorporate the term "ordinary high water line" and apply it to forest practices hydraulic projects in the same manner that it is applied to forest practices under the existing hydraulic project regulations in WAC 220-110.

Furthermore, Paragraph 3(a) of Section 203, 2ESSB 6406 also includes language providing that the Forest Practices Board can simply incorporate by referencing those portions of WAC 220-10 applicable to forest practices. This strongly suggests a legislative intent that the exact language of the existing, applicable rules in WAC 220-110 be incorporated into forest practices regulations without modification.

We expect the implementation of the Hydraulic Code under DNR permitting and regulatory oversight to provide the same level of fish protection that is achieved under the current system of Hydraulic Code rules administered by the DFW. Making the Board aware of our concerns about the ordinary high water line vs. bankfull width language is intended to preserve fish life protection as it is applied today to state waters under the Code.

<u>The definition for Forest Practices Hydraulic Project</u>

SDS Lumber strongly recommends Option B for the definition of a Forest Practices Hydraulic Project (FPHP). Following the requirement in 2ESSB 6406 that directs the Board shall incorporate applicable Hydraulic Code rules as they existed on the effective date of the law, and the specific direction in 2ESSB 6406 Section 216:

Stevenson Land Company
(dba: SDS Lumber Co)

P.O. Box 266
Bingen, WA 98605
(509) 493-2155 phone
(509) 493-2535-fax

Jeremy Grose
Inventory Forester

> *"Nothing in this act affects any rules processes or procedures of the department of natural resources or the department of fish and wildlife existing on the effective date of this section that provide for regulatory integration for hydraulic projects and forest practices for projects in nonfish-bearing waters."*

Forest practices rules for Type N Waters should not be affected by this rule change.

This position is further supported by current Hydraulic code rules. Hydraulic Code measures for the protection of Type N, non-fish waters, were integrated into forest practices rules in 2001. There is no need to further modify the forest practices rules for these waters.

The term "forest practices hydraulic project" appears several times in the 'Draft Rule'. Including Type N Waters in the definition affects the rules, processes and procedures of the Department of Natural Resources for projects in nonfish-bearing waters as those rules existed when 2ESSB 6406 went into effect last July. Thus, Option 1 is not consistent with Section 216 of the legislation.

Listed below are sections in the proposed rule that increase process and/or restriction on nonfish-bearing waters if Type N Waters are included in the definition of FPHPs

New Section WAC 222-12-037 (3). Applications that include forest practices hydraulic projects.

- Landowners will be required to "demonstrate" that common general provision designed to protect fish life do not apply to most Type Np and virtually all Type Ns Waters present in their Forest Practices Application activity area.
  New Section WAC 222-12-037 (4). Applications that include forest practices hydraulic projects.
- Projects affecting only Type N waters may be subject to additional conditioning beyond current rules for non-fish waters.

WAC 222-16-010. The definition of fish protection standards.

- All Type N waters will be subject to fish protection standards that are new to this rule.

New Section WAC 222-16-025(3)(c). Fish protection standards for forest practices hydraulic projects.

- Potentially requires mitigation for FPHP on Type N Waters, thus changing current non-fish stream rules.

New Section WAC 222-16-025(4)(c) and (d). Fish protection standards for forest practices hydraulic projects.

Stevenson Land Company
(dba: SDS Lumber Co)

P.O. Box 266
Bingen, WA 98605
(509) 493-2155 phone
(509) 493-2535-fax

Jeremy Grose
Inventory Forester

- Additional stream bank protection measures applied as general conditions to Type N Waters that exceed current Equipment Limitation Zone requirements for these waters.

WAC 222-16-050 (4). Class II of forest practices.

- Eliminates the opportunity for a Class II notification renewal of any forest practices application or notification that involves any typed water. This affects both renewals of FPAs that include a FPHP on fish-barring and nonfish-bearing streams. Currently most FPA can be renewed with a notification.
- Eliminates all FPHPs from Class II, including many involving Type N Waters that would currently be classified as Class II and conducted under a notification.
    - Eliminates the current opportunity to build fire trails or extend small gravel pits involving Type Ns Waters under a Class II notification.
    - Eliminates the current opportunity to conduct certain salvage logging that involves Type Ns Waters under a Class II notification.
    - Removes the opportunity to conduct certain partial cut harvests and certain salvage operation of dead or dying timber under a Class II notification.
    - Eliminates any opportunity to harvest 40 acres or less with a Class II notification when the harvest area includes any Type Np or Ns waters.
    - Removes the opportunity to build 600 feet or less or road with a Class II notification when any there is a Type Ns water within the clearing limits of the road construction.
    - Eliminates the current opportunity to conduct any timber harvest, salvage or road construction as a Class II forest practice when the operation is within urban growth areas designated under authority of the Growth Management Act when the forest practice involves any typed Water.

WAC 222-16-050 (5). Class III of forest practices.

- All forest practices involving any typed water including all those involving Type N , nonfish-barring water within the boundary of the activity will be classified as Class III forest practices requiring an application. Currently, only Type S, F and some Type Np Waters are restricted to Class III forest practices applications.

WAC 222-20-040(1) Approval Conditions.

- FPHPs including those involving Type N Waters within the boundary of the activity are added to the list of forest practices activities that may require the landowner or operator to notify DNR two business days before commencement of

Stevenson Land Company
(dba: SDS Lumber Co)

P.O. Box 266
Bingen, WA 98605
(509) 493-2155 phone
(509) 493-2535-fax

Jeremy Grose
Inventory Forester

actual operations. Currently this notification is required only for forest practices activities which, because of soil conditions, proximity to water or other unusual conditions as determined by the department.

WAC 222-20-090(2), WAC 222-24-038 and WAC 222-30-020. Pre-Application Consultation.

- Recommendations for consultation with DFW will extend to forest practices applications that include activities affecting only nonfish-bearing waters. For some landowners who do not often carry out forest practices on their land, this recommendation will increase the effort required to submit an FPA and unnecessarily increase the work load for DFW.

In summary, including Type N Waters in the definition of a FPHP goes against the legislative requirement that the fish-barring water integration process not affect the current regulation of non-fish bearing waters. Because the term "forest practice hydraulic project" is used repeatedly in the proposed rule, it is critical that nonfish-bearing waters, Type N, be removed from the definition of a FPHP.

Thank you for consideration of our points on these important topics.

Sincerely,

Jeremy Grose 6/28/13

Jeremy Grose
Stevenson Land Company (dba SDS Lumber Company)
Inventory Forester

13-18

ANDERSON, PATRICIA (DNR)

From: Martin Fox <Martin@muckleshoot.nsn.us>
Sent: Friday, June 28, 2013 11:30 AM
To: ANDERSON, PATRICIA (DNR)
Cc: Karen Walter
Subject: HPA rule comments

Ms. Anderson,

We have a few additional comments to those we previously submitted. In regards to rule changes bringing the hydraulic permits into the forest practices rules, we note some recent changes.

On pages 1 & 2, the original rule proposal changed every 'ordinary high water mark'(OHWM) from the HP rules to bankfull width to be consistent with the forest practices rules. We note that at a recent Forest Practices Board meeting there were efforts to change this back to OHWM; however, this is inconsistent with the Forest Practices rules, thus we recommend using the term 'bankfull width' rather than OHW (also referenced as 'Option 1').

The second choice, page 10, is whether or not HPA's can be required on Type N waters. The draft rules contained several conditions where and HPA would be required on Type N waters - water supply to fish hatchery, various projects within a quarter mile of Type F, replacing culvert in flowing water, etc. The current Option 1 includes all Type N with no conditions, and Option 2 excludes all Type N in recent changes. We recommend maintaining the original language of 'Option 1'.

Thank you for the opportunity to comment on these rule revisions.

Sincerely,

Martin Fox

Martin J. Fox, Ph.D.
Fisheries Biologist
Muckleshoot Indian Tribe Fisheries Division
39015 172nd Ave SE
Auburn, WA 98902
253-876-3121
martin.fox@muckleshoot.nsn.us

13-19

MAKAH TRIBE

P.O. BOX 115 • NEAH BAY, WA 98357 • 360-645-2201

In Reply Refer to: MAKAH FISHERIES MANAGEMENT – HABITAT DIVISION

Patricia Anderson
Department of Natural Resources
P.O. Box 47012
Olympia, WA 98504-7012

Re: Makah Tribe's Comments on Proposed Rule Making WSR 13-11-133

June 27, 2013

Forest Practice Board:

The Makah Tribe would like to submit comment on the proposed definition changes for WAC 222-16:

"Bankfull width" definition
Option 1 is to leave the forest practices bankfull width (BFW) definition the same (no change) or Option 2 is to add the ordinary high water mark (OHWM) definition to it.

Option 1 is preferred. We understand that this definition change is attempting to carry out the direction of 2WSSB 6406, however below are some concerns that should be addressed.

- The forest practices definition has served well for a long time. The current BFW definition is used throughout the FP HCP, and referenced using the best science available for Forest and Fish Rule. This could create a large amount of confusion for the public. Educational materials and efforts to remedy the confusion would be a costly expense for the State;
- The OHWM is already defined within WAC 222-16-010 as a separate definition, so would this be proposing to remove that definition as well?
- OHWM is frequently associated hydraulic permitting for terrestrial/upland waterways as well as estuary and coastal shoreline areas, whereas BFW is more frequently referred for use with upland habitat for riparian delineation. therefore they are used for different goals, although there is some locations of physical overlap, however an inclusion of BFW into OHWM seems more sensible than what is proposed;
- This rule would be adding OHWM under BFW, and depending on the location BFW and OHWM are similar in many situations, however in certain habitat types, they can be very different. These differences are described in the Dept. of Ecology's Determining the Ordinary High Water Mark on Streams in Washington State Manual (2010). These differences could impact the protections of certain areas that are sensitive. Impacts on the eastside and headwaters, where waterways tend to be relatively confined, are likely to be low. However

dynamic river systems that have complex channels, flood plains, wetlands, relic channels, etc that are frequent to high intensity storms will likely be the most vulnerable to this change. Especially with the projected impacts of Climate Change. Confusion could result in some places on the landscape where BFW and OHWM may not coincide.

- There is some discrepancy, or at least a perceived disagreement within the State on the definition of OHWM vs. BFW, i.e. Dept of Ecology vs. DNR, therefore proposing such a change, prior to this concern being resolved seems pre-mature and unethical;
- It may be asking the impossible, but State agencies should be working towards a common goal for the best land stewardship of the State and it's resources. They should utilize and collaborate on work products, manuals, and reports so that there is unity in the voice for the public to follow. DOE has created a manual for determining the OHWM, which is a valuable tool. It even addresses the difference between BFW and OHWM however from what we have been led to believe, DNR is not utilizing this. Why not? Do they have a better alternative for educating the public?

Forest Practices Hydraulic Project" Definition:
Option 1 is Type S, F, or N Water" is included in the definition (no change) or Option 2 is to remove Type N Water from the definition.

Option 1 is preferred.

The Type N provision most commonly comes into play when within 1/4 mile of Type S or F water, or 2 miles within a hatchery. We acknowledge that HPA's on all Type N streams is not reasonable, however there are sensitive Type N waters that are currently protected under the current definition that would not be protected if the definition was changed as proposed. The current definition defines the criteria for what activities on Type N waters require permitting, which helps weed out many of the Type N waters that are insignificant to a specific project. On some Type N streams that have substantial influence on fish, HPA's should be used to provide special consideration in the FPA process. The current requirements regarding Type N streams really are meant to address and highlight where concerns of water quality from sediment delivery are potential as a result of surrounding land management in and around those waters. This sediment delivery is harmful when the Type N water drains into Type F water, or even downstream to a hatchery and clogs their water intake screens, potentially killing hundreds of thousands of hatchery salmonids. To confidently remove Type N waters from hydraulic permitting requirements under the current hydraulic permitting process is a step backwards for the protection of water quality and downstream fish life, habitat, and activities.

In essence of both of these definition change proposals, the WRIA 20 Watershed Management Plan (2008, Section 2.5.3) provides a great articulation of the State jurisdiction with the Forest Practices Act and watershed planning:

> "The Forest Protection Act was designed to protect soil, water, fish, wildlife, and amenity resources in addition to timber supply by regulating timber harvest, road construction and maintenance… One of the key provisions in the Forest and Fish Report, from which forest

practice rule changes … derive, is the goal that the state's best management practices (BMPs) for forestry meet requirements for water quality as stipulated under the Clean Water Act (CWA) and Endangered Species Act (ESA). The [EPA] and [DOE] agreed that the FFR would be crafted to protect surface waters from impairment by forest practices."

In essence of this relationship, the best science available supported the creation of the Forest and Fish Rules, and in turn the regulations (FF Rules) implement both of these definitions above. The Makah Tribe hopes that it is with the best science available that these definition changes are considered and not for the purpose of political needs.

It is unfortunate for the short amount of time allotted for review; however thank you for the opportunity to comment on these proposed rules.

Sincerely,

Ray Colby
Makah Fisheries Management Assistant Director

Cc:
Russ Svec, Makah Tribe
Nancy Sturhan, NWIFC

13-20

UCUT
UPPER COLUMBIA
UNITED TRIBES

Upper Columbia United Tribes
25 W. Main, Suite 434
Spokane, WA 99201

Phone: 509-838-1057
Fax: 509-209-2421

Coeur d'Alene Colville Kalispel Kootenai Spokane

June 28, 2013

Washington State Forest Practices Board
1111 Washington St. SE, PO Box 47012
Olympia, WA 98504-7012

Dear Honorable Forest Practices Board Members:

SUBJECT: Forest Practices Hydraulic Projects / OTS-5382.4
AMENDATORY SECTION (Amending WSR 13-01-007, filed 12/6/12, effective 1/6/13)

The UCUT thanks you for the opportunity to provide comment on the Washington State Legislature's direction regarding the integration of efforts for FPAs/HPAs. Specific to the proposed rule-making language for Forest Practices Hydraulic Projects, then the UCUT supports both Options 1 as found on Pages 1 and 11.

1. We support the Option 1 definition for "**Bankfull Width**" because that is what is most commonly and historically used in the field by the various agencies that contribute to the implementation of Washington State's Forest Practices rules. If integration and streamlining is the intent here, then using the existing field standard and protocol makes the most sense.

On Page 1, we support Option 1: "Bankfull width" means:
(a) For streams - The measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).
(b) For lakes, ponds, and impoundments - Line of mean high water.
(c) For tidal water - Line of mean high tide.
(d) For periodically inundated areas of associated wetlands - Line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

2. We support Option 1 for what is meant by, included in, or what constitutes a **"Forest Practices Hydraulic Project"** because for many reasons some Type N systems can have a significant influence and substantial impact on fish.

On page 11, we support Option 1:"Forest practices hydraulic project" means a forest practices activity that includes the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any Type S and F, or N Water.

We appreciate your consideration of our comments. If you have questions or require additional information, please do not hesitate to contact us.

Sincerely,

Chase C. Davis
Forest, Fish, and Wildlife Liaison
25 W. Main, Suite 434
Spokane, WA 99201
Office (509) 209-2414
Cell (509) 990-0170
Fax (509) 209-2421
chase@ucut-nsn.org
www.ucut.org

Weyerhaeuser

SUSTAINABLE FORESTRY INITIATIVE

Corporate Headquarters • PO Box 9777 • Federal Way, WA 98063-9777

13-21

July 2, 2013

Ms. Patricia Anderson
Forest Practices Board Rules Coordinator
Department of Natural Resources
Forest Practices Division
1111 Washington Street SE, 4th Floor
PO Box 47012
Olympia, WA 98504-7012
forest.practicesboard@dnr.wa.gov

Re: Forest Practices Hydraulic Project Rulemaking

Weyerhaeuser Company submits the following comments on the proposed Forest Practices Hydraulic Project (FPHP) rulemaking. By our membership association, we support the comments submitted by the Washington Forest Protection Association (WFPA).

In this proposed rulemaking, the Department of Natural Resources (DNR) is proposing to:

- Develop rules to carry out 2012 legislation (2ESSB 6406), which directed DNR to streamline the application process for forest practices including hydraulic projects. The legislature directed the Board to ". . . incorporate into the forest practice rules those fish protection standards in the rules adopted under chapter 77.55 RCW as the rules existed on the effective date of this section, that are applicable to activities regulated under forest practices rules."

2ESSB 6406 also directed the Board to establish and maintain technical guidance in the forest practices board manual to ". . . assist with implementation of the standards incorporated into the forest practice rules . . . (including) best management practices and standard techniques to ensure fish protection." Weyerhaeuser's experienced field staff have been active participants in FPHP board manual process and we will continue to provide input to Forest Practices Division staff. It is critical that an acceptable board manual be adopted by the Board concurrent with the rule package in order to ensure a smooth transition in the field.

At the May 14th Board meeting, Weyerhaeuser, WFPA and other stakeholders voiced concern over two significant issues. Specifically we expressed concern about 1) insertion of the term "*bankfull width*" in place of "*ordinary high water line*" in rule text incorporated from Hydraulic Code rules; and 2) the definition of a "*forest practices hydraulic project.*" In response to public testimony, the Board modified its proposal and is now seeking input on the two areas of concern. The revised public comment proposal considers several options for Board consideration.

In regard to the insertion of the term *"bankfull width"* in place of *"ordinary high water line,"* we do not support either option proposed by the Board. It is our view that the Board must—as directed in 2ESSB 6406—retain the Hydraulic Code rule term *"ordinary high water line"* in the Forest Practices rules whenever Hydraulic Code rule language is incorporated directly from the Department of Fish and Wildlife (WDFW) rules that existed on the effective date of 2ESSB 6406.

The remaining issue of concern is the definition of a *"forest practices hydraulic project."* Weyerhaeuser supports Option 2, limiting the definition of a *"forest practices hydraulic project"* to only projects conducted in fish-bearing waters.

More detailed comments on each area of concern follows below.

Insertion of a New Jurisdictional Definition "Bankfull Width" and Replacing Existing Jurisdictional Definition Ordinary High Water Line

This is not a trivial argument over seemingly like definitions. In fact, replacing *"ordinary high water line"* with *"bankfull width"* will result in increased economic impact associated with FPHP steam-crossing installations. As written, the cost-benefit analysis supporting this rule package did not assess the economic impact and probable cost of replacing the jurisdictional term *"ordinary high water line"* with *"bankfull width."* In fact, the cost-benefit analysis concludes that the rulemaking package is not expected to impose additional cost for forest landowners. We believe that conclusion is in error and request that such an economic analysis be conducted by DNR. We reserve the option of providing supplemental information should the cost-benefit analysis be revised to address the impact of a new jurisdictional standard.

As stated previously, Weyerhaeuser does not support the options proposed by the Board as they do not meet the plain requirements of 2ESSB 6406. We recommend that wherever the phrase "*bankfull width*" has been inserted to replace "*ordinary high water line*" (in language copied from Hydraulic Code rules) it must to be removed and *"ordinary high water line"* reinserted.

Paragraph 3(a) of Section 203 of 2ESSB 6406 reads as follows:

> *"The board shall incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, <u>as the rules existed on the effective date</u> under this section, that are applicable to activities regulated under the forest practices rules."*

This is plain and unambiguous legislative direction to the Board. The statute requires the Board to incorporate into the Forest Practices rules those fish protection standards found in existing WDFW rules that apply to activities regulated under the Forest Practices rules. Within the Hydraulics Code, the definition of *"ordinary high water line"* is fundamental in determining whether an activity (including a forest practice) is a hydraulic project subject to regulation under chapter 77.55 RCW. In Section 101(12) of 2ESSB 6406, the Legislature "re-enacted" the definition of *"ordinary high water line,"* suggesting an intent to preserve this fundamental jurisdictional threshold in the implementation of 2ESSB 6406.

Furthermore, Paragraph 3(a) of Section 203, 2ESSB 6406 also includes language encouraging the Board to simply incorporate by reference those portions of WAC 220-10 which are applicable to forest practices. This strongly suggests a Legislative intent that the exact language of the existing applicable rules in WAC 220-110 be incorporated into Forest Practices regulations without modification.

Although Section 202(2)(b) of 2ESSB 6406 refers to the term "*bankfull width*" as applied to certain and limited type of culvert and bridge installations and repairs, this cannot be used as rationale to change the fundamental jurisdictional threshold in the implementation of 2ESSB 6406. Section 202(2)(b) of the bill is very specific in identifying a limited set of conditions for implementing the regulatory concurrence process with WDFW. This legislative section is simply a project screen intended to identify which FPHPs would be subject to the concurrence process.

The Forest Practices Board's Notice of Proposed Rulemaking (May 20, 2013) includes language consistent with a strict legislative requirement to incorporate the applicable portions of WAC 220-110 without expansion, modification, or change.

> *"These rules fulfill the directive in 2ESSB 6406 (2012) to incorporate into the forest practices rules (Title 222 WAC) the fish protection standards from the hydraulic code rules (chapter 220-110 WAC) that are applicable to activities regulated under the forest practices rules."*

The Board states that the proposed rules are based on implementation of the directive in 2ESSB 6406 and does not say anything about a broader exercise of discretion to fulfill the purposes and policies of RCW 76.09.010 under the Board's general authority. If the Board did want to change the application of the Hydraulic Code with this integration, its action would not be exempt from SEPA under Section 213 of 2ESSB 6406.

<u>The Definition for Forest Practices Hydraulic Project</u>

We recommend Option B for the definition of FPHP. Forest practices rules for Type N waters should not be affected by this rule change. In 2ESSB 6406 Section 216, legislative direction is clear:

> *"Nothing in this act affects any rules, processes or procedures of the Department of Natural Resources or the Department of Fish and Wildlife existing on the effective date of this section that provide for regulatory integration for hydraulic projects and forest practices for projects in <u>non fish-bearing</u> waters."*

Hydraulic Code measures for the protection of Type N, non-fish waters, were integrated into forest practices rules over a decade ago, specifically in 2001. During that rule adoption process, the Fish and Wildlife Commission determined in Section 220-110-035(7) of the hydraulic rules that:

> *"Based on the fish protection measures contained in . . . (forest practices rules and board manual) . . . forest practices . . . conducted under an approved forest practices application or notification issued by the Department of Natural Resources, and conducted in or across type <u>Np or Ns waters</u> . . . do not require an HPA."*

In addition, the WDFW determined that the intent of the FPHP integration process was specific only to Type S and F waters. Recently WDFW adopted WAC 220-110-085 as required by 2ESSB 6406 to establish the WDFW procedures for the concurrence process. Sub-section (1) of that rule notes the earlier integration of fish protection measures for projects in non-fish streams into Forest Practices rules and goes on to explain that:

> *"In April 2012, the legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment requires integration of hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land.*

Listed below are examples where the proposed rule will increase process and/or restriction on non fish-bearing waters when Type N waters are included in the definition of FPHPs.

New Section WAC 222-12-037(3). Applications that include forest practices hydraulic projects.

- Landowners will be required to "demonstrate" that common general provisions designed to protect fish life do not apply to most Type Np and virtually all Type Ns waters present in their Forest Practices Application (FPA) activity area.

New Section WAC 222-12-037(4). Applications that include forest practices hydraulic projects.

- Projects affecting only Type N waters may be subject to additional conditioning beyond current rules for non-fish waters.

WAC 222-16-010. The definition of fish protection standards.

- All Type N waters will be subject to fish protection standards that are new to this rule.

New Section WAC 222-16-025(3)(c). Fish protection standards for forest practices hydraulic projects.

- Potentially requires mitigation for FPHP on Type N Waters, thus changing current non-fish stream rules.

New Section WAC 222-16-025(4)(c) and (d). Fish protection standards for forest practices hydraulic projects.

- Additional stream bank protection measures applied as general conditions to Type N waters that exceed current Equipment Limitation Zone requirements for these waters.

WAC 222-16-050(4). Class II of forest practices.

- Eliminates the opportunity for a Class II notification renewal of any FPA or notification that involves any typed water. This affects both renewals of FPAs that include a FPHP on fish-bearing and non fish-bearing streams. Currently most FPAs can be renewed with a notification.
- Eliminates all FPHPs from Class II, including many involving Type N waters that would currently be classified as Class II and conducted under a notification.

- Eliminates the current opportunity to build fire trails or extend small gravel pits involving Type Ns waters under a Class II notification.
- Eliminates the current opportunity to conduct certain salvage logging that involves Type Ns waters under a Class II notification.
- Removes the opportunity to conduct certain partial cut harvests and certain salvage operation of dead or dying timber under a Class II notification.
- Eliminates any opportunity to harvest 40 acres or less with a Class II notification when the harvest area includes any Type Np or Ns waters.
- Removes the opportunity to build 600' or less of road with a Class II notification when any there is a Type Ns water within the clearing limits of the road construction.
- Eliminates the current opportunity to conduct any timber harvest, salvage or road construction as a Class II forest practice when the operation is within urban growth areas designated under authority of the Growth Management Act when the forest practice involves any typed water.

WAC 222-16-050(5). Class III of forest practices.

- All forest practices involving any typed water including all those involving Type N , non fish-bearing water within the boundary of the activity will be classified as Class III forest practices requiring an application. Currently, only Type S, F and some Type Np waters are restricted to Class III forest practices applications.

WAC 222-20-040(1). Approval conditions.

- FPHPs, including those involving Type N waters within the boundary of the activity, are added to the list of forest practices activities that may require the landowner or operator to notify DNR two business days before commencement of actual operations. Currently this notification is required only for forest practices activities (which because of soil conditions, proximity to water, or other unusual conditions) as determined by the department.

WAC 222-20-090(2), WAC 222-24-038 and WAC 222-30-020. Pre-application consultation.

- Recommendations for consultation with DFW will extend to FPAs that include activities affecting only non fish-bearing waters. For some landowners who do not often carry out forest practices on their land, this recommendation will increase the effort required to submit an FPA and unnecessarily increase the workload for DFW.

In summary, including Type N waters in the definition of an FPHP goes against the legislative requirement that the fish-bearing water integration process not affect the current regulation of non fish-bearing waters. Because the term *"forest practice hydraulic project"* is used repeatedly in the proposed rule, it is critical that non fish-bearing waters (Type N) be removed from the definition of a FPHP. As written, the cost-benefit analysis supporting this rule package did not assess the economic impact and probable cost from adding Type N waters to the definition of FHHP. In fact, the cost-benefit analysis concludes that forest landowners are likely to realize benefits related to a streamlined application process for their forestry-related activities. We believe that conclusion is in error and request that DNR assess the cost associated with the new process and regulatory restriction imposed on those forest practice projects associated with non fish-bearing waters due to the inclusion of Type N

waters in the definition of FPHPs. As noted above, we believe the costs are significant and it is highly likely that landowners will not realize benefits from a streamlined application process due to the inclusion of Type N waters in the definition of FPHP.

We are enclosing a copy of the supplemental Attachment to the Washington Forest Protection Association's Comment Letter on Proposed Rule Making for Forest Practices Hydraulic Projects dated June 27, 2013. We support and endorse these comments as Weyerhaeuser technical and field staff contributed to that work product.

Please accept these comments in the cooperative manner as they are intended and thank you in advance for your consideration.

Sincerely,

Kevin Godbout

Kevin Godbout
Director, External & Regulatory Affairs
Western Timberlands

Enclosure

Attachment to Washington Forest Protection Association Comment Letter on Proposed rule Making for Forest Practices Hydaulic Projects Dated June 27, 2013

Replacing the term "ordinary high water line" with "bankfull width." In each place where the phrase "bankfull width" has been inserted to replace "ordinary high water line" in language copied from Hydraulic Code rules, it should be removed and "ordinary high water line" reinserted.

222-16-025(4)(e)

222-16-025(4)(f)

222-16-025(4)(h)

222-24-041(1)

222-24-041(2)

222-24-041(4)(a)

222-24-41(5)(a) Also see the comment specific to this subsection below

222-24-046(2)
In addition, remove the term "bankfull width" from 222-24-041(6)(b)

222-12-050 (5). In emergency action.

The only change to this section should be the replacement of *"approval"* with *"consultation"*. Neither the current language in the Hydraulic Code (HC) rules nor 2ESSB 6406 (SB 6406) supports replacement of the existing language, *"in the bed of the stream,"* with *"that could affect the bed or flow"*.

New Section222-16-025 (4) - (b), (e), (i) and (j). Fish protection standards for forest practices hydraulic projects.

Where applicable, these provisions are general BMPs in forest practices around water and will appear in the manual. But SB 6406 was specific about what HC rule provisions are to be incorporated into forest practices. SB 6406, Section 203 (3) (a) requires the board to:

> *"incorporate into the forest practices rules those fish protection standards in the rules adopted under chapter 77.55 RCW, as the rules existed on the effective date of this section,* ***that are applicable to activities regulated under the forest practices rules****"* (emphasis added).

(4)(b). The only sections of the current HC rules where this language appears are as follows:

- 220-110-060 - Construction of freshwater docks, piers and floats and the driving or removal of piling;
- 220-110-130 Dredging in freshwater areas;
- 220-110-190 Water diversions;
- 220-110-201 Mineral prospecting without timing restrictions;
- 220-110-202 Mineral prospecting with timing restrictions;
- 220-110-270 Common saltwater technical provisions;
- 220-110-310 Utility lines;
- 220-110-320 Dredging in saltwater areas; and
- Various regulations for aquatic plant control

Although the language in (4)(b) is a reasonable best management practice, by its absence from all HC rule sections that do apply to forest practice rules, it should not be added as a *"shall apply"* to all forest practices hydraulic projects.

(4)(e). Again, although this bullet is a reasonable best management practice, this language is not included in any section of the current Hydraulic Code applicable to forest practice activities regulated under forest practice rules and therefore should not be included among the general conditions that "*shall apply to any forest practices hydraulic project*". It has been taken from gravel removal (mining), mineral prospecting and aquatic plant and weed removal sections of HC rules.

(4)(i). Again, a reasonable best management practice but not applicable to activities generally regulated under forest practice rules and therefore should not be a general condition that shall apply to any forest practices hydraulic project. This language appears in only one section of the HC rules: 220-110-100 - Conduit crossing.

(4)(j). Again this language is not included in a single section of the Hydraulic Code that is applicable to activities regulated under forest practice rules and should not be included as a general condition for any forest practices hydraulic project.

222-16-025 (4)(d). The last sentence *"Equipment shall not enter or operate within the wetted perimeter of a stream"* should be removed. Equipment use in construction of crossing structures in Type N Waters is covered in 222-24-042(g) and does not need to be addressed here. In the body of our comment letter WFPA presents the case for adopting the Option 2 under the definition of "Forest practices hydraulic project." Whether or not the definition of a forest practices hydraulic project includes Type N Water, the legislation that these rule are intended to implement clearly states nothing in the act (2ESSB 6406) was to affect the rules currently in place for forest practices in nonfish-bearing waters. If Type N Waters remains in the

definition of a forest practices hydraulic project, this general provision should be restricted to fish-bearing waters.

222-24-010(2).

The phrase *"free and unimpeded passage"* should not be added to this first bullet under 222-24-010(2). The current language, *"Providing for fish passage at all life stages,"* should be retained. Hydraulic Code rule, WAC 220-110-070, Water crossing structure, states: *"In fish bearing waters, bridges are preferred as water crossing structures by the department in order to ensure free and unimpeded fish passage for adult and juvenile fishes and preserve spawning and rearing habitat . . ."* As used there, the phrase *"free and unimpeded fish passage"* is a description of what can be achieved with the use of a bridge as a water crossing structure. This phrase does not appear anywhere else in the HC rules and it is not specified nor is it implied that it is a regulatory requirement. WAC 220-110-070 (3)(a) states (a) In fish bearing waters or waters upstream of a fish passage barrier (which can reasonably be expected to be corrected, and if corrected, fish presence would be reestablished), culverts shall be designed and installed so as not to impede fish passage. Culverts shall only be approved for installation in spawning areas where full replacement of impacted habitat is provided by the applicant.

222-24-020 (6)(d).

As above, the HC rule language "*Design stream crossings in Type S and F Waters so as not to impede fish passage at any life stage*" should be followed.

222-24-020(22)(c).

We suggest that this should read *"Detailed site plans and designs for bridges and fish passage culverts or other complex elements of the proposal;"* in order to avoid adding unnecessary forest practices requirements to projects involving non-fish streams.

222-24-041(2).

We suggest returning to the language in the earlier draft that more closely follows Hydraulic Code rule language in 220-110-070 (1)(f) & (2)(f) & (3)(b)(ii)(F)(i). The language in the current draft eliminates any judgment in determining what activities require a Class III FPA. In the HC rule language, maintenance is separated from construction and structural work. The HC rules for maintenance include the phrase *"where there is potential for wastage of paint, sandblasting material, sediments, or bridge parts (to enter) into the water."* This offers an opportunity for judgment for minor maintenance like spiking down a plank or removing dirt from the surface of a concrete bridge.

222-24-041(4(c).

Remove the second to the last sentence. It is the same as 6(d).

222-24-041(5)(a).

The reference to WAC 222-16-010 and bankfull width should be deleted. There is no definition of *"bankfull width for culvert design"* in this version of the FPHP rules. The Forest Practices rule language on temporary culvert installation should follow the Hydraulic Code rule temporary culvert installation language: *"Where fish passage is a concern, temporary culverts shall be installed according to an approved design to provide adequate fish passage."*

222-24-041(5)(c).

The Forest Practices rule language on temporary culvert installation should follow the Hydraulic Code rule temporary culvert installation language 220-110-070 (2)(c): *"at a peak flow expected to occur once in 100 years during the season of installation."*

222-24-041(6)(b).

There is no requirement or basis in the Hydraulic Code, Hydraulic Code rules, Forest Practices or SB 6406, for adding *"based on bankfull width"* to this sentence. In order to following HC Code rule language, the reference to design based on bankfull width should be removed and this sentence should read, from 220-110-070(3)(b)*"To facilitate fish passage, culverts shall be designed to the following standards:"*

222-24-041(6)(b)(ii)(A).

We recognize that this is a Hydraulic Code rule language, but (6)(b)(ii), referencing Table 1 Line 2, cannot be implemented in intermittent fish streams as written because it requires a minimum low flow of water when these streams are dry at low flow. There does not seem to be a way out of this conundrum. We would like to see DNR, DFW and landowners get together to fix this problem during the CR 102 rule comment period.

222-30-021(1)(c)(iii)(C). Large woody debris in-channel placement strategy

While 222-30-021(1)(c)(iii)(A) indicates that a landowner *"**may** design a LWD placement plan for department approval prior to submitting a forest practices application"*, this bullet (C) does not use *"may," but rather says "the approved plan **must** be included" (emphasis added).* This bullet (C) should be reworded to require that a plan be submitted with the FPA in order for the application to be considered complete.

222-30-022(1)(c)(ii).

The last sentence should be reworded to state that *"a complete forest practices application must include a LWD placement plan."*

222-30-050(a).

The existing language in the last sentence should also be changed to replace *"comply with"* with *"incorporate"*, as per WAC 220-110-160. (Line 47, Page 55 April 23rd proposal to the Board)

222-30-050(a)(ii).

Add *". . . are specifically approved to be removed by the department."*

222-30-050(a)(iii).

Use the same language as in WAC 220-110-160 (5): *"If limbs or other small debris enter Type S or F Waters, with identifiable bed or banks, as a result of felling timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into such typed waters and placed outside the 50-year flood plain. Limbs or other small debris shall be removed from dry portions of Type S and F watercourses prior to the normal onset of high flows. Large woody material which was in place prior to felling timber shall not be disturbed." The WAC actually says "*(5) If limbs or other small debris enter the watercourse, with identifiable bed or banks, as a result of felling and yarding of timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into the watercourse and placed outside the 50-year flood plain. Limbs or other small debris shall be removed from dry watercourses prior to the normal onset of high flows. Large woody material which was in place prior to felling and yarding of timber shall not be disturbed." The new language says 'watercourse' & '100 yr flood plain"

Section 222-30-050, Felling a bucking and Section 222-60-060 Cable yarding.

In the body of our comment letter, WFPA presents the case for adopting Option 2 under the definition of "Forest practices hydraulic project." Whether or not the definition of a forest practices hydraulic project includes Type N Water, the legislation that these rule are intended to implement clearly states nothing in the act (2ESSB 6406, per section 216) is to affect the rules currently in place for forest practices in nonfish-bearing waters. The FPHP rule integration in progress must not change the current intent, language or interpretation of forest practice rules for timber harvest in, or affecting Type N Waters.

Section 222-30-O50, felling and bucking, places the language integrated from the HC rules in a series of sub-paragraphs, (i) through (iv) under 050(1). Sub-section (1) is specific to Type S and F Waters and their RMZ core zones, sensitive sites along Type Np waters as identified by rule, and

A and B wetlands. Sub-section 050(2) requires compliance with (i) through (iv) in 050(1) but limits those requirements to S and F Waters only.

WFPA supports the integration approach in 222-30-050. (It's appropriate to include Type Np Water sensitive sites in the felling and bucking restriction since these sensitive sites are designated in rule as no harvest areas.) With the edits we suggested above, the approach in 222-30-050 is the correct way to incorporate the HC provision timber harvest into forest practices.

On the other hand, Section 222-30-060, cable yarding , takes a different approach. Several HC provision are incorporated as separate sub-sections in parallel to, rather than within the sub-section (1) that is specific to Type S and F Waters. Proposed sub-sections (5), (7), (8) and (9) are not specific to S and F waters. Sub-section (6) includes flowing water a along with Type S and F Water, presumably including some Type Np Waters. Sub-section (9) is general enough to apply to all waters under current forest practices rules. We urge the Board to change the language and construction of WAC 222-30-060 as recommended below.

222-30-060(5) should use the same language as in WAC 220-110-160 (2) but should specify Type s and F Waters :

> *"Trees or logs which enter Type S and F Waters, with identifiable bed or banks, during yarding shall remain where they enter unless parts or all of the trees or logs are specifically approved to be removed by the department."*

222-30-060(6). Drop the reference to flowing water.

222-30-060(7). The text of sub-section (7) should be moved to sub-section (1) where it would introduce the yarding corridor language in current rules. (At the 9th line of the body of sub-section (1) in the CR 102 text following the new language "forest practice application." Or in the same location, line 6 of page 57, in the April 23rd proposal to the Forest Practices Board).

222-30-060(8).

Use the same language as in WAC 220-110-160 (5):

> *"If limbs or other small debris enter Type S or F Waters, with identifiable bed or banks, as a result of yarding timber, they shall be removed concurrently with each change in yarding road or within seventy-two hours after entry into such typed waters and placed outside the 50-year flood plain. Limbs or other small debris shall be removed from dry portions of Type S and F watercourses prior to the normal onset of high flows. Large woody material which was in place prior to yarding timber shall not be disturbed."*

Important to note that the new language changes the 220-110-160(5) language from the '50 yr floodplain' to the 100 yr floodplain'

Comments on FPHP rule-making

13-22

Sturhan, Nancy [nsturhan@nwifc.org]
Sent: Friday, June 28, 2013 2:04 PM
To: ANDERSON, PATRICIA (DNR)

Below are comments on the Forest Practices Board rule-making proposal for forest practices hydraulic projects. These comments are mainly concerned with the 'options' offered in the proposed rule language. I am addressing this rule proposal as one who works in this field. I am not representing any tribe or overall tribal position.

Bank Full Width definition

The choice (Option 1 vs Option 2) here is to either leave the forest practices bank full width BFW definition as is in the rule currently, or use the BFW definition for establishing riparian zones, and the ordinary high water mark (OHWM) definition for hydraulic permits.

Option 1 is preferable, using just one method to determine stream width, leaving the BFW definition as it is in forest practices rule. The Hydraulic Project Approval (HPA) rules are being brought into the forest practices (FP) rules, and some accommodation needs to be made to have common language. The current BFW definition is preferred because:

1) The current BFW definition is used throughout the FP Habitat Conservation Plan, and is used throughout the FP rules.

2) One definition for stream width is needed as these two sets of rules are combined. Confusion could result in some places on the landscape where BFW and OHWM may not be coincident. The Ecology manual (Olson, P. and E. Stockdale. 2010. Determining the Ordinary High Water Mark on Streams in Washington State. Second Review Draft. Washington State Department of Ecology, Shorelands & Environmental Assistance Program, Lacey, WA. Ecology Publication # 08-06-001) describes the general areas on the landscape where BFW would be found outside OWHM, and where the converse is true, as well as where on the landscape they are likely coincident. From the Ecology manual: "The OHWM water stage may be higher than the bankfull stage for streams that migrate or have multiple channels. In straight, single channels or steep and confined channels the OHWM and bankfull water stage may be the same. For incised streams, the OHWM may be below the bankfull stage (see Figure 2-4 and Appendix E, Geomorphic indicators of OHWM on streams). In summary, bankfull indicators are related to water flows that move bedload sediment. The OHWM indicators include soil and vegetation in addition to channel indicators. "

3) The forest practices definition has served well for a long time.

Forest Practices Hydraulic Project Application(HPA)/Type N Streams

The concurrence rules, WAC 220-110-085, resulting from SB 6406, require integration of HPA's into the FPA process for "fish streams". Still, two options are offered, the choice being whether to include all Type N streams, or to not include any Type N streams. Neither of those choices is preferable. Requiring HPA's on all Type N streams is unnecessary, but on some Type N streams that have substantial influence on fish, HPA's, or at least special consideration in the FPA process, should be used.

We also have to contend with the water typing issues. There are many mis-typed streams on the landscape. The legislation said "fish streams", which, from our water type maps could be F, S, and mis-typed Np, or Ns, in various places on the landscape. We need to take care that we are applying the HP rule to actual fish streams.

One way to better insure that we are applying the FPHP rule appropriately would be to include some additional Type N locations that can have a large influence on the Type F & S waters. I quote language from the March 22, 2013, version of the proposed rule language below for the situations where FPHPA's should be required - or special attention on FPA's should be considered, if FPHPA's are limited to F&S streams:

"Forest practices hydraulic project" means a hydraulic project that:

(a) Requires a forest practices application under chapter 76.09 RCW;

(b) Includes the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state; and

(c) Involves work within or across:

(i) Type S and F Waters; or

(ii) Type N Waters where there is a hatchery water intake within two miles downstream; or

(iii) Type N Waters including but not limited to projects within a quarter mile of Type S or F waters where any of the following conditions apply:

(A) Where the removal of timber adjacent to the stream is likely to result in entry of felled trees into

flowing channels;
(B) Where there is any felling, skidding, or ground lead yarding through flowing water, or through dry channels with gradient greater than twenty percent;
(C) Where riparian or wetland leave trees are required and cable tailholds are on the opposite side of the channel;
(D) Where road construction or placement of culverts occurs in flowing water; or
(E) Where timber is yarded in or across flowing water;

Type N Waters that are likely to adversely affect"

If this choice is really not a choice, since the legislation and WAC speak only of fish streams, then please consider inclusion of these situations in the board manual used to apply the rules, as situations that require close scrutiny. Recognize that fish streams, no matter what DNR calls them on a map, are the target of the FPHPA's.

Two further notes about this rule making process. Titling the CR102 as "Biomass" caused several folks to overlook the FPHP rule proposal and miss some of the time allowed for public review. Folks who were not following the biomass rules deleted the announcement without opening it. Please be careful to title the CR102 and the announcement with the rules it affects.

One other concern – with this rule the public is asked to evaluate a series of options. It might have been better to number them "Option 1A, 1B" and "Option 2A, 2B" to avoid the confusion that the Option 1's go together, and the Option 2's go together. It is really preferable to have a rule package proposal to evaluate, and not a series of selections. In the rush to meet deadlines, there is still a responsibility to the public to make the proposal understandable.

Thank you for the opportunity to comment on these proposed rules.

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<><> Nancy Sturhan <><>
NWIFC Forest Practices Coordinator
<><> 360-528-4354 <><>

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Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

June 26, 2013

Patricia Anderson, FPB Rules Coordinator
Department of Natural Resources
Forest Practices Division
P.O. Box 47012
Olympia, WA 98504-7012

RE: Rule Making on Forest Practices Hydraulic Projects

Dear Ms. Anderson and the Forest Practices Board,

We received notice that last minute changes have been made to your proposed new rules concerning forest practices hydraulic projects. The additions are very recent and significant. As such, I would respectfully request that the comment deadline be extended for at least another three weeks to permit adequate review and stakeholder input on the new language changes.

From our brief review, we are highly concerned with the latest additions to the definitions (WAC 222-16-010). Forest practice hydraulic projects as defined under the new Option 2 would only mean forest practice activity in Type S and F waters. Any forest practice work in Type N water would not need a hydraulic project, even if it was immediately above fish streams, State shorelines, hatchery intakes or domestic water supplies. With no hydraulic project requirements on Type N streams, we would expect ample opportunity for significant, adverse impacts on public and tribal resources. We therefore strongly recommend that the Board implement Option 1 that includes hydraulic projects for forest practice activities in Type N waters.

In addition, another option has been added for the definition of bankfull width. The new Option 2 in this section defines bankfull width as the ordinary high water mark on forest practice hydraulic projects. For all other forest practice activities the bankfull is defined as the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. Option 2 would be confusing and not consistent across the Forest Practice Rules. We would therefore recommend that the Board utilize Option 1 for the definition of bankfull width.

Thank you for your time and attention on this important matter.

Sincerely,

Phil Rigdon, Deputy Director
Natural Resources Department

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

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Goodyear Nelson Hardwood Lumber Co., Inc.

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DATE RECEIVED
JUL 0 1 2013
Forest Practices Division

June 27, 2013

Patricia Anderson, DNR
P.O. Box 47012
Olympia, WA 98504-7012

Forest Practice Board Members:

Regarding the proposed rule changes, integrating HPA's with FPA's.
At the time the authorizing bill was being debated, the stated purpose was clearly that there was intent to streamline the permitting process to save time and money for both the regulators and the landowners. The proposed new rules will do neither and we will end up worse off than we were before the new rules.
Under the Forest and Fish agreement, the industry accepted the premise that through adaptive management some new rules were going to evolve that would lead us to do business in a different manner but we otherwise would enjoy 50 years of certainty.
Adaptive management does not require class three permits to go from 30 days to 60 days. This is not a new efficiency, or a financial savings for the regulators or the industry. Other reviewers have always complained and looked for a way to change the 30 day requirement. This requirement has forced the DNR to be efficient and get their work scheduled in a timely manner. When additional time was needed DNR had ways to get that cooperation with the landowners.
This proposal would muddy the waters, take away the DNR's ability to continue to handle the permitting process in a timely manner, and it will give veto power back to WDFW.
The intent of the rule change was to give the DNR the authority to issue both the HPA and FPA at the same time. There is no option if the landowner and DNR do not agree with WDFW and DNR will never make a decision that does not have concurrence with WDFW on fish matters even though they have the authority to do so.
Originally under the forest practice act the industry agreed to protect anadromus fish species. Now we are protecting species that were never considered, such as sculpins and resident trout or other species that leaves us vulnerable to anything anyone who reviews applications might plant in a stream on our property. We somehow have gotten away from the notion of fish presence and now look at what might have been or might be. Is this an example of adaptive management?
Please re-engage the intent to streamline the permitting process and stop eroding away the landowner protections.
Thank You,

Paul Kriegel
Resource Manager
Goodyear Nelson Hardwood Lumber Co., Inc.