FINAL COST-BENEFIT ANALYSIS
Forest Practices Board
Forest Practices Hydraulic Projects

By Gretchen Robinson, Environmental Planner
Department of Natural Resources
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The Forest Practices Board (Board) is proposing amendments to Title 222 WAC to carry out 2012 legislation.[1] The legislation integrated hydraulic project approvals (HPAs) for forestry activities into the forest practices application (FPA) and approval process.

CONTEXT

Legislative directive

The purpose of the legislation was, in part, to streamline regulatory processes and achieve program efficiencies. It directed 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.*[2]

It also stipulated:

> *Nothing in this act affects any rules, processes, or procedures of the department of fish and wildlife and the department of natural resources existing on the effective date of this section that provide for regulatory integration of hydraulic projects and forest practices for projects in nonfish-bearing waters.*[3]

Analysis requirements for rule making

Before adopting rules, agencies are required to:

- Determine whether the rule is needed to achieve the general goals and specific objectives of statute;
- Analyze alternatives to rule making and the consequences of not adopting the rule;
- Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented; and
- Determine that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the goals and objectives.[4]

PROBABLE COSTS AND BENEFITS

This rulemaking is not expected to impose additional costs for forest landowners (the regulated community) or the public's environmental resources (fish, wildlife, water quality and quantity, and

[1] Second Engrossed Substitute Senate Bill 6406, chapter 1, laws of 2012 (2ESSB 6406), Sec. 203
[2] RCW 76.09.040(3) as amended by 2ESSB 6406
[3] 2ESSB 6406
[4] Administrative Procedure Act, RCW 34.05.328, Significant legislative rules

capital improvements of the state). In fact, forest landowners are likely to realize benefits related to a streamlined application process for their forestry-related activities.

Forest landowners

The rule proposal combines forest practices and hydraulic projects into one application rather than two. Currently, forest landowners proposing hydraulic projects associated with forest practices must undergo two permitting processes – forest practices applications (FPAs) administered by the Department of Natural Resources (DNR) and hydraulic project approvals (HPAs) administered by the Department of Fish and Wildlife (WDFW).

Under the proposed rules there will be no fee changes because forest practices hydraulic projects are currently exempt from any fees additional to FPA fees.[5] Landowners should, in fact, realize cost savings due to the streamlined application led by one state agency rather than two.

Comments on the rules published in the Washington State Register on June 5, 2013[6] included considerable concerns from representatives of the timber industry about costs related to: inclusion of Type N Waters in the definition of "forest practices hydraulic project"; and changing the stream measurement metric from "ordinary high water line" to "bankfull width" in the language incorporated from the hydraulic code rules into the forest practices rules.

As a result, several the proposed rules were modified to ensure conformance with the objectives of 2ESSB 6406. Some modifications were made to specify that certain rules apply only to Type S and F Waters. Other modifications return the stream measurement metric in the rules imported from chapter 220-110 WAC, hydraulic code rules, from "bankfull width" to "ordinary high water line." These modifications were intended to ensure that landowners will not be subject to higher costs under the forest practices rules than under the hydraulic code rules.

Specific information on the rule modifications can be found in the Concise Explanatory Statement for forest practices hydraulic project rules.

Environment

The rule proposal is not expected to create any changes to the environmental protections afforded by the existing hydraulic rules or forest practices rules.

Comments on the rules published in the Washington State Register on June 5, 2013 included concerns about the potential harm to public resources related to the confusion of having two stream width measurement metrics ("ordinary high water line" and "bankfull width") in the forest practices rules. However, to ensure conformance with 2ESSB 6406 and to ensure no additional costs are imposed on the timber industry, "ordinary high water line" is maintained for hydraulic projects in Type S and F Waters. DNR and WDFW intend to work closely together to ensure the appropriate expertise continues to be employed for all hydraulic projects to ensure public resource protection.

DNR's and WDFW's partnership will also be demonstrated in the FPA review process for proposals including hydraulic projects. As directed by 2ESSB 6406, WDFW will review all FPAs involving hydraulic projects in Type S and F Waters, communicate with applicants about any

[5] RCW 77.55.321 (new RCW enacted under 2ESSB 6406)
[6] WSR 13-11-133

concerns relating to consistency with fish protection standards, and provide comments to DNR prior to DNR's approval or disapproval of an FPA. In addition, WDFW will conduct a concurrence review of the following project types and provide written notification to DNR of its concurrence or non-concurrence of the hydraulic project proposal:

- Culvert installation or replacement, and repair at or below the bankfull width in Type S and F Waters that exceed five percent gradient;
- Bridge construction or replacement, and repair at or below the bankfull width of unconfined streams in Type S and F Waters; or
- Fill within the flood level-100 year of unconfined streams in Type S and F Waters.[7]

The administrative measures described above are intended to ensure that expertise from both agencies is fully utilized to assure the same level of environmental protection that exists under the current regulatory regime.

Alternatives to rule making and the consequences of not adopting a rule

The rule proposal combines forest practices and hydraulic projects into one application process as mandated by the 2012 legislation. The Board must fulfill the legislative mandate to incorporate fish protection standards in the hydraulic code rules (chapter 220-110 WAC) into the forest practices rules. Not adopting rules is, therefore, not an acceptable alternative. A possible alternative was to incorporate the fish protection standards by reference.[8] Instead, the Board determined it would be more helpful to applicants and other rule users to add the content of the portions of the hydraulic code most likely to be associated with forest practices into the appropriate sections in Title 222 WAC.

In summary, there is no acceptable alternative to adopting forest practices hydraulic code rules. The consequence of not adopting rules is that the legislative directive would be unfulfilled and the regulatory efficiencies intended by the legislation would not be realized. An alternative to the proposed rules would be to simply incorporate hydraulic code fish protection standards by reference. The Board has determined this is not an acceptable alternative because forest practices applicants would be obliged to follow two sets of rules instead of one for forest practices proposals that include hydraulic projects.

CONCLUSIONS

The proposed forest practices hydraulic project rules are expected to relieve forest landowners of some administrative costs associated with forest practices proposals that include hydraulic projects.

There are no proposed changes to public resource protections currently afforded separately by forest practices and hydraulic project rules. Importantly, DNR and WDFW will both continue working together to ensure that the appropriate expertise and oversight is employed for all hydraulic projects so there is no change in public resource protection.

[7] RCW 76.09.490
[8] RCW 76.09.040(3)