FOREST PRACTICES BOARD

SPECIAL BOARD MEETING
March 26, 2010
Natural Resources Building
Olympia, Washington

Members Present

Peter Goldmark, Chair of the Board, Department of Natural Resources
David Whipple, Designee for Director, Department of Fish and Wildlife
Brad Avy, Designee for Director, Department of Agriculture
Bill Little, Timber Products Union Representative
Carolyn Dobbs, General Public Member
Dave Somers, Snohomish County Commissioner *(participated by phone)*
David Hagiwara, General Public Member David Herrera, General Public Member
David Herrera, Skokomish Tribe
Doug Stinson, General Public Member/Small Forest Landowner *(participated by phone)*
Norm Schaaf, General Public Member
Sherry Fox, General Public Member/Independent Logging Contractor
Tom Laurie, Designee for Director, Department of Ecology

Absent

Brent Bahrenburg, Designee for Director, Community, Trade and Economic Development

Staff

Darin Cramer, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Peter Goldmark called the Forest Practices Board (FPB or Board) meeting to order at 10:00 a.m. Introductions were made by Board members, staff and public. Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency safety briefing.

PUBLIC COMMENT

Scott Swanson, West Fork Timber Company:

- Habitat conservation plans (HCPs) that incorporate watershed analysis and related mass wasting prescriptions are working well, and the U.S. Fish and Wildlife Service oversees their implementation.
- The landowners did the right thing and should not be penalized by taking away the regulatory certainty they worked long and hard to obtain.
- DNR has the necessary authority to address concerns raised about watershed analysis without triggering the adaptive management process.

Adrian Miller, Washington Forest Protection Association (WFPA):

- The timeframe for review of DNR's proposal was inadequate.
- WFPA supports the consensus recommendations made by the Board's committee on watershed analysis, and also supports DNR's proposed review process (Attachment 1 in the Board's information packet). This will be the fastest way to provide protection to public resources and will offer landowners the most certainty in this regulatory process.
- WFPA cannot support DNR's proposal to initiate adaptive management outlined in Attachment 2. It proposes significant changes to the Forests and Fish Report. It transfers the responsibility of maintaining watershed analysis prescriptions from DNR to landowners (Issue #1), and it expands DNR's authority to augment prescriptions prior to and during the review process (Issue #2).

Jim Lynch, West Fork Timber:

- The Board convened a Watershed Analysis Committee, the committee made consensus recommendations to the Board, and the Board should be acting on those recommendations.
- Board members and the public were not given ample time for review and discussion on DNR's proposals. Any action should be delayed to allow for adequate review.
- The U.S. Fish and Wildlife Service and others agree that the HCPs are working well, and DNR should defer to that assessment in their evaluations.
- DNR has ample authority to oversee watershed analysis, and no adaptive management is needed at this time. The Board should encourage DNR to do its job, implement the law as it is, and if issues arise, there are always opportunities to return to the Board for further consideration, which would at that time be better informed without wasted time and resources.

Harry Bell, Green Crow Management Services:

- The Board committee's consensus recommendations are likely to be successful in resource protection because they had stakeholder agreement.
- Historically, when the Board has taken guidance from the stakeholders, the Board is successful because the stakeholders have ownership and deliver.

Court Stanley, Port Blakely Trees Farms:

- The Board Committee's consensus recommendations should be allowed to work, be monitored, and then, if necessary, go to adaptive management.
- Through the years Port Blakely has been choosing the use of rule identified landforms or watershed analysis prescriptions, whichever is more conservative, and that strategy has been working.

Jeff Light, Plum Creek Timber Company:

- For nearly 15 years Plum Creek has been implementing their HCP in strong partnership with DNR regional staff, the federal services, and stakeholders, and much has been accomplished for resource protection in the basins they manage. Please acknowledge that partnership, the investment the landowners have made in watershed analysis, and the continuing dividends the investment is paying in resource protection.
- Adopt the Board committee's recommendations, and clarify that HCP holders are not included in the proposed review process.

- Rule making would be very costly and time consuming, and way out of line with any issues watershed analysis might bring.

William Vogel, U.S. Fish and Wildlife Service:

- There are two different types of watershed analyses:
  1) Those that only have a link to the Forest Practices HCP. The Services are very concerned about making sure that the Forest Practices HCP is properly implemented. DNR administers that HCP and we defer to DNR, the Board, and other stakeholders as to how you work through issues of watershed analysis, and what is necessary to ensure watershed analyses are properly implemented; and
  2) Those that deal with the land-based HCPs. These change over time. They are adapted over time occasionally. We've made changes as to how watershed analysis is done, how prescriptions go into effect (e.g., they do not go through SEPA, but go into effect immediately), and how they are reviewed and monitored. We believe an extra review of those prescriptions is not needed.
- Whatever the Board decides, the US Fish and Wildlife Service looks forward to working with the DNR staff in the assessment of which watershed analyses need to be prioritized.

Tim McBride, Hancock Forest Management:

- There is a lack of collaboration and coordination with this issue just coming out three days ago. It doesn't allow for looking at the proposal, making useful comments, and bringing it up to the collaboration stage.
- We agree with and recommend Carolyn Dobbs' initiative to the Board that more review time be required for proposals such as this.
- One voice for working forests is probably the best way to go, and if we have one voice then the results are better.

Peter Goldman, Washington Forest Law Center:

- Rule making is compulsory in this situation. It is imperative that this move through adaptive management so the watershed analysis rules can be improved. The watershed analyses are not protecting our watersheds today, and we have numerous outdated rules on the books that create gaping deficiencies and loopholes. These loopholes allow some landowners to log in places they would never be allowed to under today's rules. There is no way to fix the problem with voluntary agreements, which would not be legal under the Administrative Procedure Act, and would be bad policy.
- The Conservation Caucus is concerned that while the Board is deciding whether to partially or completely do away with watershed analysis, landowners will continue to file forest practices applications (FPAs) under stale and un-reviewed watershed analyses. Encourage DNR to use its full conditioning authority to screen the high risk FPAs.
- Direct DNR to take a no-nonsense approach to reviewing watershed analyses. We're concerned about the ability of DNR to implement a rigorous standardized process to review those prescriptions that landowners want to update and review. We're concerned that DNR does not have the ability to provide that sort of oversight.
- This cannot be a case of the fox guarding the hen house. Landowners are required to do reviews but there needs to be some sort of independent review.

Kevin Godbout, Weyerhaeuser Company:

- Weyerhaeuser is taking is simple approach. Start conducting reviews, if appropriate voluntarily take measures to protect public resources, and continue to focus on science and adaptive management changes and processes through partnerships and collaboration in the field.
- Weyerhaeuser thinks landowners along with other stakeholders can solve this problem just by taking action and getting to work, and authority already exists to do this.
- The proposal is a bit premature, there are some issues with it, but if the Board chooses to go in that direction, we would like to discuss it with you.

Karl Forsgaard, Washington Forest Law Center:

- The Conservation Caucus supports DNR's recommendation to initiate rule making. Rules are needed because FPAs that get SEPA exemptions based on out-of-date watershed analyses pose risks to public resources and safety. Please direct Forests and Fish Policy (Policy) to report to the Board at the May meeting regarding Policy's status on making recommended revisions to the rules.
- We are concerned that watershed analyses will get SEPA exemption even if they do not have the rule identified landforms identified. DNR plans to screen FPAs for this loophole, but that puts the burden on DNR staff resources, so we agree with DNR's recommendation to be given the authority to deny FPAs where landowners will not agree to voluntary concessions.
- DNR staff's recommendation is explicit about watershed analyses being up-to-date; the Board committee's recommendations were very vague on that point.

Robert Meier, Rayonier:

- Rayonier supports the committee's process for watershed review. Rayonier was an early adopter of the watershed analysis process, and the prescriptions have been very effective in eliminating landslides and protecting public resources, even in areas of very high rainfall.
- Rayonier will probably do detailed reviews of half of the prescriptions because of the investment made in scientific analysis detailed prescriptions. We may convert the other half to standard prescriptions because they are very close to the current rules.
- Please do not to distract landowners and DNR with additional Policy review, analysis and work. Rather, encourage landowners and DNR to move forward with the watershed updates that need to be done, and allocate limited resources to those things that have real effects on the ground.

Miguel Perez-Gibson, Conservation Caucus:

- Does DNR have the capacity to run both the Forest Practices HCP and watershed analysis, and does Policy have the capacity to review the proposal? What will not get done?
- What is the approval process for FPAs to harvest under watershed analysis prescriptions within HCPs and not within HCPs?
- Is DNR required to approve FPAs whether the prescriptions are current or adequate or not? The answer to this should determine whether or not rule changes are needed.

Chris Mendoza, Cooperative Monitoring, Evaluation and Research Committee (CMER) Co-chair:

- Status of CMER projects within the Mass Wasting Effectiveness Monitoring Program:
    - Testing the Accuracy of Unstable Landform Identification Project: Scoping has occurred; research should begin within the next year.

- Mass Wasting Prescription-Scale Effectiveness Monitoring Project (a.k.a. "post mortem study"): Should be wrapped up this summer, submitted to CMER, and then peer reviewed.
- Mass wasting Landscape-Scale Effectiveness Monitoring Project: Not yet started.
- Mass wasting Buffer Integrity and Windthrow Assessment Project: Not yet started.

- When watershed analysis was first being developed in the 1990s it was considered a good idea; it was the first time that technical folks got together and worked on issues in a watershed. What some people don't know is that the recommendations given by the technical folks weren't always the ones that were transferred into prescriptions by the prescription teams. So you've got inconsistencies between watershed analyses. Some are better than others. Monitoring modules were required to be developed, but the use of the modules was voluntary. So some watershed analyses were monitored and some weren't.
- DNR's recommendation for screening for the quality of the watershed analyses is to be applauded.

NORTHERN SPOTTED OWL UPDATE

Chuck Turley reported that an implementation team has been selected to work on moving forward with the Northern Spotted Owl Policy Working Group's recommendations:

David Whipple, representing Washington State Department of Fish and Wildlife
Shawn Cantrell, representing the conservation community
Kevin Godbout, representing landowners
Bettina von Hagen, representing a land trust organization
Chuck Turley, representing DNR, and will chair the group

The group will operate consistent with the Open Public Meetings Act and meeting times and dates will be published. The group will first develop a charter and will provide it and a timeline to the Board for the May Forest Practices Board meeting.

WATERSHED ANALYSIS

Darin Cramer summarized the staff recommendations as described on his March 22, 2010 memorandum to the Board, and the materials the Board received in preparation for this meeting. He explained that DNR's recommendation for the near term, Attachment 1, does not involve rule making and responds to the Board committee's recommendations presented at the February 10, 2010 meeting. Staff will prioritize approved watershed analyses for review based on a standardized set of criteria, and develop a standardized review process in consultation with stakeholders. For the long term, staff recommends review via the Adaptive Management Program of specific problematic issues in WAC 222-22-090 (Attachment 2). Staff believes the rule leaves gaps in the review process. It places the responsibility of review of watershed analyses on DNR, and staff suggests landowners should be responsible for reviews if they are interested in maintaining their watershed analyses.

<u>Review Process</u>

Julie Sackett explained DNR's proposed watershed analysis prioritization strategy and review process outlined in Attachment 1 in the Board's materials. She pointed out that the highest priority analyses for review would be those in watersheds that have experienced a significant storm event producing high numbers of landslides. The lowest priority would be those in which reviews have been completed, and all others would be prioritized somewhere between. A formal prioritized list and standardized review process will be developed with stakeholder input. Staff expects to have a

prioritized list available for the Board to review at the August 2010 meeting, and a review process available for the November 2010 meeting.

Once this system is implemented:

- DNR will be responsible for the final evaluations and approvals of the reviews.
- The entire area, not just prescriptions, will be evaluated. There are now opportunities with advanced technology to conduct remote evaluations and identify unstable areas that were not originally known.
- Landowners will have three options in this review process: 1) Withdraw their mass wasting prescriptions if they do not wish to complete reviews; 2) supplement their prescriptions with the rule identified landforms and an avoidance/mitigation strategy; or 3) modify and/or maintain their prescriptions.
- Regardless, SEPA review will be involved.

FPAs prior to and during reviews will be, and are currently being, processed by applying existing conditioning authority and by working with landowners to apply other voluntary measures as appropriate. In reference to Miguel Perez-Gibson's questions posed earlier in the meeting, the rules do not give DNR any authority in regards to determining whether a prescription is "current" or not. The prescriptions that were approved as part of the original watershed analysis stay in place until the review is completed, so the question for DNR in reviewing an FPA is whether or not the prescriptions are "specific" or "non-specific." The former would be classified Class III, and the latter Class IV-special requiring SEPA review.

Norm Schaaf asked what DNR would do if landowners that have a common set of prescriptions in a watershed do not all want to proceed in the same way. Sackett said DNR hopes that all of the landowners will decide to take the same path forward, but that is not yet resolved.

Dave Somers asked how the analyses in HCPs would be handled in the prioritized review list. Sackett answered that any analyses with reviews completed will be low on the priority list, and the intent is to work closely with those landowners in developing and coordinating a timeline. She said she doesn't think the landowners with HCPs will be doing much, if anything different than they're already doing. The questions in the standardized review will be the same as for the other landowners. Cramer added that DNR is anticipating working closely with the services in any of the cases where a landowner holds an HCP.

Carolyn Dobbs asked how many of the 52 approved watershed analyses have HCPs. Cramer answered 17 watershed administrative units (WAUs) are associated with HCPs, and Sackett answered that 6 landowners hold HCPs in those WAUs.

Peter Goldmark referred to Perez-Gibson's question about DNR's capacity to oversee watershed analysis. He explained in the formative years of watershed analysis DNR had considerable funding while these analyses were being put in place. Cramer said that was correct, about $3 million per biennium was devoted to watershed analysis program. However, that included funding the Level 1 and Level 2 assessments and review, and DNR was leading many of the watershed analyses and providing detailed training. He said the process DNR is proposing now will be a challenge, but he

believed it is within DNR's current capacity to provide the training needed for launching the reviews and performing the oversight and approval functions.

Sherry Fox thanked Sackett for the detailed explanation, and thanked staff for staying close to the Board committee's recommendations. She said she hoped before the Board goes into any rule making, the Board will have the benefit of CMER results, and any information it can provide about risk.

Proposal Initiation

Marc Engel said there are two issues in WAC 222-22-090 that DNR is raising for adaptive management consideration. The rule as it now exists puts the onus on DNR to perform reviews, and it does not explicitly give DNR the authority to supplement or withdraw prescriptions if reviews are not completed. Staff believes these two issues are possible impediments to ensuring that watershed analysis prescriptions are kept current in the long term. Therefore, staff is recommending that the Board forward the issues to Policy for consideration. He asked that the Board advance the proposal initiation document (Attachment 2 in the meeting materials) to the Adaptive Management Administrator, allow Policy to prioritize the proposal within its existing work list, and ask the Adaptive Management Administrator to provide reports to the Board at each regular meeting on the status of the proposal and an estimated timeline for a response from Policy.

Dobbs asked if there is implicit authority for DNR to withdraw prescriptions. Cramer answered that the rule is silent, and DNR is currently relying on implicit authority to act on the review strategy described by Sackett, which relies on cooperation from the landowners to get the job done.

Goldmark said this proposal would be to make sure that reviews do occur, not to create a different standard. Through adaptive management all of the caucuses will have the opportunity to provide input into a course of action to proceed.

Sherry Fox asked if DNR thought about forwarding these two issues to the Board's committee. That may have been a reasonable approach given all the time the committee members gave to developing the recommendations. Cramer answered it is clearly the Board's prerogative to do that.

Cramer emphasized that the memorandum intentionally did not specify a timeline because the issue is fairly complex, and Policy will need to decide where it will fit in with its other priorities. In the meantime, there is much landowner interest in participating in the process outlined in Attachment 1, and the need for immediate Policy action may diminish over time for DNR's short-term needs.

MOTION: Tom Laurie moved that the Forest Practices Board forward the Watershed Analysis Mass Wasting Prescriptions proposal to the Adaptive Management Program Administrator to initiate Adaptive Management Program review.

SECONDED: Carolyn Dobbs

Board discussion:

Dave Somers said he whole heartedly supported the motion.

Tom Laurie said the Board committee's goals were to not penalize those landowners making a good faith effort and investment, to make sure that all of the analyses are being kept up to date, and to utilize all of DNR's authority to ensure that. The committee found a lack of clarity in the rule, which concerned him about DNR's oversight role - the "back-stop" that he was looking for. The proposal initiation (Attachment 2) is not the initiation of rule making. Instead it starts a lengthy stakeholder process and will allow time for the Board to take a look at relevant information that might come out of CMER research. It is important to get it started precisely because the Adaptive Management Program processes can take a lot of time.

Peter Goldmark said the Policy co-chairs have indicated Policy may not even start to look at this for a year, and considering how long it might take to go through adaptive management, a recommendation may not be brought to the Board for another year after that. This can provide ample opportunity for the caucuses to consider how the voluntary process is unfolding.

David Whipple said he thought the options for landowners in the DNR implementation strategy created a lot of flexibility for the landowners and embodied the ability for landowners to voluntarily act. The Board could gain a lot of information by both the implementation of that strategy and the adaptive management process.

Doug Stinson said if the landowners are willing to put in this much effort to participating, the Board should give it a chance to work and not approve the rule making part at this time.

Norm Schaaf said he was very appreciative of DNR's review strategy and noted it can be implemented immediately. But there had been so little time to review and deliberate on the proposal initiation recommendation (Attachment 2), so he prepared an amendment to the motion.

AMENDMENT: Norm Schaaf moved to amend the motion by amending the staff recommendations to reflect the following:

Issue #1. WAC 222-22-090 places the onus on DNR to perform watershed analysis reviews. Entities with interest in the maintaining watershed analysis mass wasting prescriptions should be responsible for initiating reviews.

Adaptive Management consideration:

- Reinforce the concept that watershed analyses need to be kept up to date.
- Specify that entities with interest in maintaining watershed analysis mass wasting prescriptions are responsible for initiating reviews.
- DNR and stakeholders are encouraged to develop a "quick update" process for watershed analysis that expedites the review process, especially where the landowner agrees to replace or supplement existing prescriptions with rule-identified landforms and current standard rules for unstable slopes.
- Watershed analyses that contain multiple landowners may have reviews that cover individual landowner without affecting the prescriptions or review requirements of other landowners.

Issue #2. WAC 222-22-090 does not explicitly provide DNR authority to withdraw prescriptions if reviews are not completed, or supplement prescriptions if necessary, prior to and during a review.

Adaptive Management consideration:

- Give DNR the authority to withdraw mass wasting prescriptions within WAUs in which the required reviews are not being initiated within a stakeholder consensus timeline.
- Landowners will be encouraged to utilize the alternate plan process to achieve resource protection where prescriptions have not been effective.

SECONDED: Sherry Fox

Board discussion:

Schaaf explained that the concern with Issue #1 in the recommendation shifted perhaps too much of the responsibility for reviews from DNR to the landowner. He said landowners are ready to initiate reviews, but the review process is a DNR regulatory process laid out in law that landowners cannot control, not a landowner process.

Goldmark asked staff if it is correct that landowners cannot initiate their own review. Cramer said they can, but it is also correct that DNR must administer the process.

Schaaf explained a concern with Issue #2 regarding DNR supplementing prescriptions during and prior to reviews. He said landowners in good faith have conducted watershed analyses, adopted prescriptions, and gone through SEPA, and the outcome of those efforts should be honored until the review process is completed.

Brad Avy said he was concerned that the information came out only three days before the meeting and an opportunity for working the issues among the caucuses was missed. He suggested postponement of a Board decision especially since it could be quite some time before Policy even takes it up.

Somers expressed concern that the amendment to the motion would restrict the ability of the Adaptive Management Program to explore options. The action would be to send it off to a collaborative process, which is the formal process adopted years ago for involving all stakeholders.

Fox said she supported the amendment to the motion, and that she agreed with Avy's concerns. She added that Attachment 1 did a good job of following the guidelines of the Board's committee, but Attachment 2 did not.

Laurie said he didn't understand why the Board wouldn't be interested in the benefit of adaptive management thinking about DNR being able to condition out-of-date mass wasting prescriptions. He said the amendment seemed to skip the middle ground of conditioning, and allowing DNR to withdraw prescriptions without that opportunity.

Dobbs said she too was puzzled about why the amendment to the motion takes that piece out of Issue #2. She added that she also was troubled by the process, and that something with a voluntary/ regulatory balance should come out of a collaborative process that includes stakeholder involvement. She asked staff whether it would be legal to break up the units as suggested in the fourth bullet under Issue #1 of the amendment.

Cramer answered yes, that the rule provides for the opportunity to conduct reviews in smaller units within a WAU, but from DNR's perspective this would be more difficult to deal with.

Dobbs asked if that would conflict with the cumulative effects focus of watershed analysis. Cramer answered it could.

Schaaf said the intent was that landowners with differing approaches could seek differing solutions to achieve resource protection. That would be a clarification that adaptive management could discuss.

David Hagiwara said he supported the amendment because it seemed to be more consistent with the Board committee's intent.

Somers expressed concern about changing "Possible rule revision" to "Adaptive management consideration." The amendment seemed to restrict the adaptive management process which would totally defeat the purpose.

Laurie asked, in reference to the first bullet under Issue #2, what, "stakeholder consensus timeline" meant. Schaaf answered that would be an amount of time to complete the reviews determined through a stakeholder process, and if a review is not done within that timeframe, it could be subject to DNR withdrawing those prescriptions.

Laurie asked what would happen if there was no consensus regarding the timeline. Schaaf answered that perhaps the Board would then need to establish a timeline in rule.

Goldmark said DNR is responsible for ensuring the protection of public resources. As brought out in the Board committee's work, there are voids in the rules as to DNR's authority to ensure that watershed analyses are up to date, incorporate best available science, and are protecting resources and not compromising public safety. DNR is working with the Board to find ways to fill in those voids.

He summarized that in earlier meetings the Board considered whether the exemptions for watershed analysis should just be removed. But on thoughtful examination it was discovered that many watershed analyses are very good, and in some cases even exceed current rule. It has become clear that prescriptions should be reviewed in some comprehensive manner to make sure they are performing their purpose. A number of watershed analyses are quite out of date, and it is with that concern that DNR is going to the Board with a voluntary approach.

He said he wanted to compliment Weyerhaeuser for stepping forward and going voluntarily down a path that he hoped others will go to make sure that the best available science is being used when conducting forest practices to minimize risk. He said it concerned him that the timeline would be stretched out for addressing those landowners who may not be as enthusiastic about the process as

Weyerhaeuser and other landowners like those who commented earlier in the meeting.

He asked the Board to remember that DNR has the responsibility to take care of everything in every watershed. He said he was concerned that the wording of amendment to the motion would weaken DNR's authority to make sure that DNR carries out its public responsibility. During the time the Adaptive Management Program is reviewing the questions, there will be opportunity for voluntary compliance and also the opportunity for a lot of caucus input into what is already working and how to best proceed to fill the voids that currently exist. He said he was speaking against the amendment.

Schaaf said there was no intention to stretch the timeline. By including a timeline with stakeholder consensus, the intention was to help define the process where there is no context in the proposal for "keeping watershed analysis prescriptions current." He said he hoped if the proposal does go through adaptive management this concept will be well described so landowners will know what to expect.

Goldmark said the proposal initiation is just guidance for forwarding to the Adaptive Management Administrator and the language will change in many ways, as it should in an adaptive management process. He then asked for a vote on the amendment.

ACTION: Amendment to motion failed. 5 Support (Stinson, Fox, Schaaf, Hagiwara, Little) / 7 Oppose (Goldmark, Avy, Dobbs, Herrera, Laurie, Whipple, Somers)

ACTION: No action taken.

MOTION: Tom Laurie moved to table the motion to a special meeting in mid-April.

SECONDED: Norm Schaaf

Goldmark clarified that the review process outlined on Attachment 1 is an administrative process that DNR is carrying out, and the motion indicates that the Board is interested in having further conversation and better agreement around the recommendation to the Adaptive Management Administrator.

Somers commented he does not want the document to pre-decide the issue.

ACTION: Motion passed 11 Support \ 1 Abstention (Fox)

Schaaf asked that the discussion at the next special meeting include how the landowners with HCPs will be included in the timeline and prioritization process outlined in Attachment 1.

Goldmark asked staff to comment on that in the special meeting.

EXECUTIVE SESSION

No executive session.

Meeting adjourned at 1:00 p.m.