FOREST PRACTICES BOARD
Special Board Meeting
John L. O’Brien Building, Hearing Room B, Olympia
August 7, 2002

Members Present:
Pat McElroy, Designee for Commissioner Sutherland, Chair of the Board
Tom Laurie, Designee for Director, Department of Ecology
Lee Faulconer, Designee for Director, Department of Agriculture
Judy Turpin, General Public Member
John Mankowski, Designee for Director, Department of Fish and Wildlife
Bob Kelly, General Public Member
Eric Johnson, Lewis County Commissioner
Toby Murray, General Public Member
Keith Johnson, General Public Member

Members Absent:
Robin Pollard, Designee for Director, Office of Trade and Economic Development
Fran Abel, General Public Member
Lloyd Anderson, General Public Member/Independent Logging Contractor

Staff:
Lenny Young, Forest Practices Division Manager
Paddy O’Brien, Assistant Attorney General
Patricia Anderson, Rules Coordinator
Josh Brown, Board Coordinator

Welcome and Introductions
Pat McElroy called the meeting to order at 9 a.m. Josh Brown gave a safety briefing and McElroy facilitated introductions.

Rule Making Process
Paddy O’Brien, Senior Counsel representing the Board, presented the process for rulemaking. (Refer to Attachment A.) John Mankowski asked if Forests and Fish rule changes, which undergo the adaptive management process, could be processed as emergency rules. O’Brien said yes and that the Forests and Fish statute did not exempt emergency rule making. Mankowski asked where adaptive management would come into play if a non-Forests and Fish rule amendment necessitated a change in a Forests and Fish rule. O’Brien said the Board would need to make a determination on a rule-specific basis. There is no specific provision in the statute. The statute is specific only to new rules for aquatic resources and amendments to the Forests and Fish rules. Pat McElroy added that not all changes need to go through a full scientific review process, but all changes must go through adaptive management.
Cultural Resources Update

John Gorman and Dawn Pucci reported on Cultural Resources Committee activity. The most recent meeting was held July 15, 2002. The committee continues to work with facilitator Tim Thompson to develop consensus on a “Cultural Resource Protection and Management Plan”, intended to address the commitments made in the Forests and Fish Report for cultural resources. Meetings have been well attended by tribal representatives, DNR personnel, and representatives for both small and large landowners.

John Mankowski asked if the committee would be proposing any rule changes. The emphasis has been on voluntary processes between landowners and tribes. The tribes have proposed some revisions to the Forest Practices Application and to rules to clarify existing regulations but these have not yet been discussed in the committee. The committee may suggest guidance language to be included in the Board Manual. Lenny Young added that better protection could also be achieved through refined implementation of existing rules.

Judy Turpin asked if an environmental representative could be included on the committee. Pucci replied yes and suggested that anyone interested in attending should contact her, Jeffrey Thomas, or Pete Heide.

Public Comment

Nels Hanson, small forest landowner and Washington Farm Forestry Association, commented on alternate plan templates. He said that four Board members have participated as a committee of the Board to view seven sites with frequently occurring situations for which templates could be used. We hope, he said, to have templates created in the not-too-distant future. He added that it is important to retain the committee and the activities it has been pursuing. Hanson thanked the Board members for their active participation in working on the templates. John Mankowski said that the movement to disband the Small Landowner Committee is not a reflection of disinterest in the Board’s work on alternate plan templates. The Board is still engaged with small landowner issues and the Joint Policy Technical Task Force work continues. The Board is disbanding the Small Landowner Committee so members can spend more time on small landowner issues.
Kevin Dobbs, Weyerhaeuser Company, said the company supports the changes to the salvage of logging residue rule. Through the implementation of Forests and Fish and from an operational standpoint, Weyerhaeuser protects natural resources and still allows the right amount of salvage under the right circumstances.

Sherri Fox, Washington Farm Forestry Association, stated that Forests and Fish never addressed the RMAP issue for small forest landowners. Schedule D1 of the road construction prescriptions indicates, “insert planning for small forest landowners.” Forests and Fish negotiations did not have time to work on small forest landowner issues. There was never really a rule written for small forest landowners on road maintenance and abandonment planning. House Bill 2311 contains important information to assist small landowners and the Board should begin rule making as soon as possible.

Rob Kavanaugh asked for assistance on possible procedures to facilitate voluntary oak habitat protection. John Mankowski said the Department of Fish and Wildlife will make the oak habitat maps available to the DNR for incorporation in its TRAX system. When a forest practice is proposed in oak habitat, reviewers will be able to see that oak habitat exists on that parcel. This may prompt a cooperative, voluntary discussion among the landowner, local interest groups and the Department of Fish and Wildlife. Mankowski added it is a great idea and no reason why it should not go forward.

Peter Goldman, Washington Forest Law Center (WFLC), filed a petition to amend the Board manual section pertaining to identification and protection of channel migration zones (CMZ). Paul Kennard, WFLC, gave a presentation on “Vertical Channel Change in Forest Rivers.” (Refer to Attachment B.) Goldman clarified that the petition is not for rulemaking, rather to amend the Board Manual. He said that WFLC believes that the Board has a duty to look at the Board Manual, make the changes based on the circumstances WFLC has included in the petition, and to make sure the Manual is consistent in the way it implements forest practices rules.

Goldman expressed interest in working with the Board and its attorney to develop a timeline for working on changes, and also to help with making necessary changes. He said that WFLC can provide resources for the process in amending the Board Manual and is willing to help develop a Board Manual that reflects the forest practices rules.
Pat McElroy stated that the petition should be processed through Adaptive Management. Paddy O’Brien concurred, and said the rules adopted by the Board allow the Board to be petitioned for changes in guidance, which is what the Board Manual is. O’Brien recommended treating the petition as a change in the guidance document and to evaluate it using the adaptive management process.

Eric Johnson asked for a status of the CMZ appeal and whether it would be subject to additional legal review. Cheryl Nielson, Assistant Attorney General representing DNR, replied that the initial case involving the Greenwater River has been remanded to DNR to take another look at vertical bed movement. DNR is taking comment now on how best to do that. Potentially, the case can be subject to another appeal and could go back to the Forest Practices Appeals Board and on to Superior Court and the appellate courts. There is also a second CMZ case on the Clearwater River dealing with the proper delineation methodology for CMZ. The problem is regulatory uncertainty as to whether the current methodology properly takes vertical bed movement into consideration. In the meantime, DNR must approve applications. Until or unless there is a better way, DNR needs direction from the Board to continue using the method in the manual, if that is appropriate.

Kevin Godbout, Weyerhaeuser Company, said it is important that the Board understand the specifics of the Greenwater case and what the Forest Practices Appeals Board did and did not do. The Appeals Board was asked by the appellants to consider the issue of lateral bank erosion on the site, to reverse the findings on the adequacy of the geological control, and to modify the 100-year timeframe. The Appeals Board was not persuaded by the appellant’s evidence. The single issue that the Appeals Board addressed was vertical bed aggradation. In its decision, the Appeals Board remanded the case to DNR to consider this hyper-technical issue. In terms of a response, DNR is nearing completion of a review of that single issue at the Greenwater site. The Appeals Board’s findings were largely in conformance with the Board Manual. There is nothing in the Board Manual that precludes considering bed aggradations or suggests that it should be disregarded. Therefore, although the current Board Manual may not be explicit on how bed aggradations should be addressed, no changes are needed for DNR to comply with the remand or to address other potential bed aggradations in delineating CMZs. Weyerhaeuser believes that the potential for bed aggradation to affect CMZ delineation is highly fact-specific. Some sites are likely to incise rather than aggrade, and on other sites aggradation is likely to occur but not likely
to affect channel migration. The discrepancy between what is technically available, what the Board Manual says, and what the Appeals Board has decided is somewhat unresolved. It would be difficult to craft a Board Manual that would address every conceivable technical situation that could occur on a site. The best approach is to continue the process that DNR is undergoing on the Greenwater site, and continue to learn on a case-by-case basis.

CMER Projects Update and Budget Review

Geoff McNaughton presented an update on CMER projects. He said that substantial progress had been made on the projects that were approved last year, and asked for approval for continued funding and for new projects.

John Mankowski asked if the projects are consistent with the work plan and if any of the projects deal with the CMZ delineation. McNaughton replied that the projects are consistent with the work plan and that none directly deal with CMZs, though the effects of CMZs are considered in some projects such as the hardwood conversion project.

Eric Johnson asked how the projects are selected. McNaughton replied that CMER makes selections by a prioritization process with voting and scoring of each project. Forests and Fish Policy Committee also reviews the list. Johnson asked if the projects are completed by competing contractors or by agency staff. McNaughton replied that most are contracted out but some are done by Washington Department of Fish and Wildlife (WDFW).

Johnson also asked if funding for the fourth and fifth years is guaranteed. McNaughton replied that all of the projects are subject to available funding. If funding changes, the budgets could be adjusted or re-prioritized, however the program’s federal funding is good for five years. The contracts are modular enough that if the fourth and fifth year funding is not available, we will still get a product. The exception is the RMZ resample project. Originally, $795,000 was proposed, but funding is not guaranteed. It would be a waste to gear up and find the sites if funding is not available.

Judy Turpin asked how the landslide designations project fits into the CMER structure. McNaughton replied it was a voluntary commitment under the Forests and Fish Agreement. It
was originally intended that DNR implement it through its regulatory responsibilities. It has a
large scientific component that CMER is looking at the impact of having it put under CMER.

Turpin asked if the bull trout projects are listed in the L1 and L2 (schedules of the Forests and
Fish Report). McNaughton said yes and that originally, the bull trout projects were to be funded and conducted by the US Fish and Wildlife Service. As these were large projects with considerable interest and the bull trout science advisory committee was involved, we decided to have our program manage the projects and the budget for the projects. US Fish and Wildlife Service is still doing other bull trout projects outside of CMER and adaptive management.

Turpin asked if there are criteria on how to use the funds. McNaughton replied that the funds have been approved by the Forests and Fish Policy Committee and have begun to be used by CMER. CMER has used the funds to supplement projects that have been already approved and to develop projects. McNaughton added that if a project were to be phased, we would have to test the methods and then determine the sample size needed. This approach would make it difficult to give the Board an accurate timeframe. We want to progress conservatively and seek the best approach before a full study is launched; thus the multi-year, phased approach.

MOTION: Tom Laurie moved that the Forest Practices Board approve the new CMER research projects as presented.
SECONDED: Toby Murray.
ACTION: Motion approved unanimously.

MOTION: Tom Laurie moved that the Forest Practices Board accept the budget proposal for funding of CMER projects as presented.
SECONDED: John Mankowski.
ACTION: Motion approved unanimously.

Rule Making – Salvage of Logging Residue
Gretchen Robinson asked the Board to adopt a permanent rule that will correct WAC 222-16-050 (4). The amendment corrects an error made in the Forests and Fish rule adoption process. Staff initiated rule making in May 2002, as directed by the Board. A public hearing was held on July 10, 2002. No public comment was received.
MOTION: Judy Turpin moved that the Forest Practices Board adopt the proposed permanent rule for Chapter 222-16-050 (4) WAC, Salvage of Logging Residue, as presented today and direct staff to file the CR-103 with the Code Reviser.

SECONDED: Keith Johnson

ACTION: Motion approved unanimously.

Rule Making – Second Substitute House Bill (SSHB) 2311 – Chapter 222-21 WAC

Gretchen Robinson asked the Board to consider rulemaking to amend Chapter 222-21 WAC to implement changes from Second Substitute House Bill (SSHB) 2311. SSHB 2311 passed in the 2002 Legislative Session, amended Chapter 76.13 RCW, Stewardship of Nonindustrial Forests and Woodlands. The changes include clarifying the terms of the Small Forest Landowner Advisory Committee members, eliminating the compensation reduction for timber harvest re-entry into approved forestry riparian easements, and clarifying the Department’s authority to compensate small forest landowners for the costs of laying out the streamside buffers and marking the qualifying timber.

MOTION: Pat McElroy moved that the Forest Practices Board direct staff to file the preproposal Statement of Inquiry (CR-101) with the Code Reviser to inform the public of a possible rulemaking for Chapter 222-21 WAC, Small Forest Landowner Forestry Riparian Easement Program, and to use public input to develop a rule proposal for consideration at the next meeting in November.

SECONDED: Judy Turpin

Board Discussion

Pat McElroy asked that staff work with the Small Forest Landowner Advisory Committee in developing this proposal.

ACTION: Motion approved unanimously.

CMZ Delineation and Vertical Bed Movement

Lenny Young prefaced a presentation by Jeff Grizzel, Natural Resource Scientist in the Forest Practices Division, by saying the Forest Practices Appeals Board’s ruling that the Board Manual
does not adequately address the influence of vertical bed movement prompted this presentation.

The Division does not agree with the Appeals Board’s ruling. DNR is seeking affirmation from
the Board that its Manual does consider and address the influences of vertical bed movement on
CMZ delineation. That is not to say the methods in the Board Manual are perfect or that
suggested improvements in the Manual should not be evaluated through the adaptive
management process. Rather, the Department is seeking direction from the Board to continue to
employ current Board Manual methods until better operationally feasible methods may be
delivered to DNR through the adaptive management process.

Jeff Grizzel then made a presentation on CMZ delineation and vertical bed movement. (Refer to
Attachment C.)

Judy Turpin asked if there is a mechanism that is used for managed conditions. Grizzel replied
that DNR uses the 100-year reference period as a guideline. If there is information available
from an unmanaged system 120 years in the past, such as government land office records or
survey notes, that information should be taken into consideration. Not all systems in eastern or
western Washington were in an unmanaged system a hundred years ago, but many were.

Eric Johnson asked how one can predict what will happen in CMZs in the future. Grizzel replied
it is a difficult problem. Realizing that management practices in the future will be vastly
different than the past, when we look toward the future, we are capturing those past poor
practices as part of our historic record. The past poor practices may have resulted in a
decelerated rate of migration, or if a channel fills up with sediment as we saw in the Greenwater,
it may have resulted in an accelerated rate of migration.

Turpin asked whether the 100-year reference period adequately covers practices that might affect
a site in the future. Most of this is based on assumptions and not all assumptions are accurate.
Pat McElroy responded that Adaptive Management is in place for questions like this.

McElroy asked Grizzel what 140 years instead of the 100 years would provide. Grizzel
answered he was not sure. Five or ten years probably would not give much information but
decades might make some difference. It would be interesting to do a retrospective look at the
harvest patterns in western Washington. Mr. Kennard’s picture of the Greenwater in the
unmanaged condition was taken in 1942, and we know that logging had not progressed up the river that far prior to 1942. If you think about settlement and harvest patterns, and the current distribution of forestland in western Washington, early timber harvesting was limited to the lower parts of these watersheds. Grizzel said that second growth is being harvested in most areas that he has worked in. If the stand is between 40 to 60 years old, then we know that the stand was originally harvested after 1940. He said most of the areas that he is worked in were not harvested prior to 1900.

Young said the 100-year number is not being used as a hard break. If there was good information at 108 years or 112 years or 126 years, it would be taken into account. We are certainly not excluding something that is over the arbitrary 100-year figure.

John Mankowski said if the current methodology is consistent with the policy objective of identifying channel migration zones and protecting them, CMER should review the question on historic use patterns and make any necessary adjustments. Developing a science-based model would require modeling growth and woody debris recruitment, predicting where log jams will occur, and measuring the sediment increase and corresponding bank width. This would cost time and money. If we gained just a couple of feet after all that, would it be worth it? CMER can double check weaknesses in the current methodology, which seems to be working fairly well, notwithstanding the recent appeals.

Young said there is a core adaptive management principal at work. As we run into challenges of the assessments on which our regulatory program is built, the Division must continue to do business – we cannot just stop. The nature of adaptive management is that it seeks continued improvements while operations continue. We need CMER’s thorough but relatively rapid thinking about the new information.

McElroy said that CMER would not decide whether or not the current Forest Practices Board Manual takes into account vertical bed movement, but whether the Manual adequately addresses this longer-term issue, and whether it really incorporates what is intended in regard to the difference between the 100-year timeframe and past practices.
Turpin agreed with McElroy but suggested the Board reserve a decision until the October meeting to allow time to look over the scientific material. McElroy said that would be okay, however, DNR’s dilemma is that operational decisions must be made day-to-day. Young said the Division will do the very best with the guidance available and will seek direction from the Board in October.

**Progress on Small Forest Landowner Road Maintenance and Abandonment Plans**

Lenny Young gave an update on the progress of Forests and Fish Policy’s Family Forest Landowner Road Maintenance and Abandonment Plan Working Group. The group has continued to meet since the last Board meeting on June 19. Participation has been very good and everything is moving very well. The Group is almost done with the task and will soon give the recommendations to Governor Locke and Commissioner Sutherland. There has not been any significant change to the recommendations that were presented to the Board in June.

Much time has been spent on figuring out a process to identify and prioritize fish blockage culverts. The group reviewed the language that landowners felt was an impediment regarding disclosure obligations in land transactions and found it was not stipulated in the Forests and Fish Agreement. Right now the consensus is that we do not need to encumber property transactions with RMAP notification language. Another issue still pending relates to avoiding federal funding entanglements for landowners. The Group is still looking at this on a program-by-program basis and will be seeking to avoid those entanglements for landowners. We have worked on two of the Board’s suggestions from the June meeting: identify acute sources of sedimentation when out in the watersheds, and consider the link between RMAP submission for family forest landowners to the submission of the forest practices application without a fixed time attached to it. We need to resolve the issues before providing the recommendations.

DNR and WDFW are continuing to explore the watershed fish blockage identification and prioritization process. We want to try to do this as inexpensively and quickly as possible. The group wants maximum use of existing information, and good scientific rigor involved in the process. Local conservation committees, county organizations, and the Salmon Recovery Funding Board’s process have done good work and we want to try to take maximum advantage of that, not duplicating work already done. We are getting very close to wrapping up our initial work and delivering our recommendations.
The group is looking into about 15 possible funding sources for landowners’ RMAP work. The Natural Resources Conservation Service within the U.S. Department of Agriculture is administering a particular program under the Farm Bill called the Environmental Quality Incentives Program (EQIP) that seems to be a promising source of potential funding for family forest owners. Also looking ahead to the Salmon Recovery Funding Board’s next granting cycle for funding of scientific work, such as prioritization and identification of blockages, and for funding of repairs to culverts. Another potential source of funding which was suggested by Senator Rockefeller at the recent Federal Assurances Workshop is the Department of Transportation’s offsite mitigation money from transportation construction projects.

DNR, in collaboration with WDFW, is developing cost estimates to identify and prioritize fish blockages. DNR is working on budget decision packages to go to the Office of Financial Management, which will request funding for that effort, and to make matches to any federal funding that we acquire.

Eric Johnson asked if the Department of Transportation had been approached about the offsite mitigation money. Young replied that Kirk Hanson of the Small Forest Landowner Office and Dave Whipple of WDFW, recently gave a presentation to the Technical Advisory Committee that consults on this type of mitigation, and that went very well. The reaction has been encouraging, but there are still details and policy considerations to work through. In the meantime, Forests and Fish Policy Committee is being informed of these efforts and DNR is asking agencies and organizations to make their staffs available to attend organizational meetings and to provide briefings about the need for funds.

Young added that another concern voiced by stakeholders is to make changes to law, rather than changing the rules. This would provide a sense of greater permanence and security.

Tom Laurie asked about announcing the EQIP process, how to help landowners through this process, and what type of education landowners would be given. Young replied that the intention would be an outreach to inform landowners of all aspects of the EQIP process. We are considering adding a funding coordinator to the Small Forest Landowner Office specifically to
Judy Turpin asked how Board members or environmental and local groups might help move this effort along. Young replied that Board members could emphasize to their organization’s staff the need to participate in funding decision processes, to make time to go to the meetings, and to emphasize the importance of this type of funding. Local citizens may not have the same voting role or status as agency members, but they would heard.

John Mankowski said this underscores the need for DNR and WDFW to have a core group of responsible individuals to sift through the funding opportunities, to understand the requirements to get the monies, and to assist the landowner as much as possible. The landowner’s job would be to identify the barriers on their land and get on a prioritized list to get the work done when the funding is available. Our job will be to provide training on identifying barriers, maintaining the lists, and encouraging the funding.

McElroy expressed that DNR, WDFW, the Office of Trade and Economic Development, and the Department of Agriculture put together a task force to review the federal funding that each agency receives and strategize ways to get money for this effort. Eric Johnson added that the Washington Conservation Commission administers a fair amount of federal funding as well.

Joint Policy Technical Task Force Update

John Mankowski gave an update on progress made by the Joint Policy Technical Task Force (JPTTF) on small landowner issues. The JPTTF has been focused on RMAPs the last few months but has other charges such as alternate plan templates, the easement program, and long-term landscape planning. Those charges have been eclipsed by RMAP, and the JPTTF needs to quickly get back to work on other goals.

Pat McElroy said he was concerned with the alternate planning process and whether the Small Forest Landowner Office Advisory Committee could keep that work flowing in light of the other work that the JPTTF has to do. Mankowski said that would be fine but work is still going on in terms of landowners submitting alternate plans, and staff reviewing the plans and conducting field trips.
McElroy said the Board encourages JPTTF to get back to work on the alternate plan process and to engage the Small Forest Landowner Office Advisory Committee as best as it can be deployed in the process.

**Board Committees of Board Members**

Pat McElroy explained that in the past the Board formed committees for different issues or tasks, which can be a cumbersome and difficult process. More recently, the Board has been operating as a whole, rather than as separate committees. McElroy suggested that the Board disband its Small Forest Landowner Committee as it has the other Board committees, and continue to focus its attention collectively on small forest landowner issues.

John Mankowski agreed, saying it would be more efficient and effective to disband the committee, eliminating duplication of effort, and allowing the Board to focus on small landowner issues as a whole.

**MOTION:** Pat McElroy moved that the Forest Practices Board Committee on Small Forest Landowners be dissolved.

**SECONDED:** John Mankowski.

**Board Discussion**

McElroy reiterated that disbanding the committee would not diminish the Board’s intention to work with small forest landowners, but simply recognizes the reality of the work that is being done.

**ACTION:** Motion approved unanimously.

**October Special Board Meeting**

Lenny Young said the annual Board retreat is scheduled for October 9th and 10th in Forks, and the agenda items would include follow-up on the CMZ issue, a field tour emphasizing both large and small landowner activities, and a discussion on the Board’s work plan.
John Mankowski asked for time to present wildlife issues. Young said yes, it would be timely to work on a wildlife work plan and make decisions in light of budget cuts. McElroy suggested the Board incorporate the oak stands issue into the wildlife issue. Tom Laurie asked to receive an update on cultural resources also.

MOTION: Mankowski moved to adjourn the meeting.
SECONDED: Judy Turpin.
ACTION: Motion passed unanimously.

The meeting adjourned at 1:40 p.m.