

1 **FOREST PRACTICES BOARD**

2 **Workshop**

3 November 8, 2016

4 Natural Resources Building, Room 172

5 Olympia, Washington

6
7 **Members Present**

8 Stephen Bernath, Chair, Department of Natural Resources

9 Bill Little, Timber Products Union Representative

10 Bob Guenther, General Public Member/Small Forest Landowner

11 Brent Davies, General Public Member

12 Court Stanley, General Public Member

13 Dave Herrera, General Public Member

14 Heather Ballash, Designee for Director, Department of Commerce

15 Joe Stohr, Designee for Director, Department of Fish and Wildlife

16 Lisa Janicki, Elected County Official

17 Patrick Capper, Designee for Director, Department of Agriculture

18 Paula Swedeen, General Public Member

19 Tom Laurie, Designee for Director, Department of Ecology

20

21 **Members Absent**

22 Carmen Smith, General Public Member/Independent Logging Contractor

23

24 **Staff**

25 Joe Shramek, Forest Practices Division Manager

26 Marc Engel, Forest Practices Assistant Division Manager

27 Patricia Anderson, Rules Coordinator

28 Phil Ferester, Senior Counsel

29

30 **WELCOME AND INTRODUCTIONS**

31 Stephen Bernath called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

32

33 **CHAIR COMMENTS**

34 Stephen Bernath thanked everyone for setting aside time for today's meeting for the Board to
35 learn the status of and potential paths forward on the development of a permanent water-typing
36 system rule. He said the meeting would be a workshop for the Board to learn all that has
37 occurred in the TFW Policy Committee's (Policy) deliberations toward making
38 recommendations to the Board. He said any Board actions will occur during the regularly
39 scheduled meeting tomorrow.

40

41 **PUBLIC COMMENT ON WATER TYPING**

42 Ken Miller, Washington Farm Forestry Association (WFFA), said he generally supports the
43 recommendations. He also shared his observations that have created a lot of confusion and
44 consternation within the small forest landowner community such as required Type F buffers
45 when: there are no fish; "fish" water goes underground; the buffer is the same for small streams
46 as it is for larger streams or when the buffer is the same regardless of seasonal water. He said

1 much of this complexity is confusing to small forest landowners and technical assistance is a
2 must.

3
4 Peter Goldman, Washington Forest Law Center (WFLC), said he believes the adaptive
5 management process is working even without 100% consensus on the water typing elements. He
6 asked the Board to request opinions, alternatives, or majority/minority reports for the February
7 2017 Board meeting. He also encouraged the Board to ask a lot of questions of stakeholders
8 particularly on the non-consensus issues and to not make the meeting solely about the consensus
9 items. He also stated that Policy and the Board have already been through dispute resolution on
10 water typing issues and does not support the current Policy process at this time.

11
12 Chris Mendoza, Conservation Caucus, stated that the Conservation Caucus disagrees with DNR
13 regarding the definition off-channel habitat. He said the ordinary high water mark is the proper
14 measurement to use to delineate off-channel habitat versus bankfull elevation, which is another
15 area of disagreement. He said they have asked DNR to review Board Manual Section 2 that
16 states “guidance measuring bankfull width and depth in this manual refers to a measurement of
17 channel dimensions at bankfull flow and not for the other parts of the bankfull width definition.”
18 He provided handouts that support what the Conservation Caucus believes is the difference
19 between the ordinary high water mark and bankfull flow elevation.

20
21 Jamie Glasgow, Conservation Caucus, said that asking stream surveyors to collect more
22 information isn’t enough to identify the extent of fish habitat in the field, and making water type
23 modification forms more complex will worsen the problem. He stated the Conservation Caucus
24 has proposed a more accurate, measurable, implementable, and defensible alternative for
25 identifying fish habitat in the field. He stated their proposed alternative would eliminate
26 electrofishing in waters connected to known fish waters downstream from potential natural
27 barriers and would limit electrofishing to those areas upstream from potential natural barriers.

28
29 Karen Terwilleger, Washington Forest Protection Association (WFPA), said they support
30 Policy’s consensus recommendations. She said any changes to rule or guidance must be based on
31 science incorporated into the adaptive management process and that any proposed alternatives to
32 clarify and improve the determination of the F/N break must be evaluated against the Board’s
33 expectations and the performance targets identified in the Forests and Fish Report. She also said
34 that redefining fish habitat as an outcome of site-specific survey protocols or application of
35 physical criteria was never envisioned in the Forests and Fish Report or the Habitat Conservation
36 Plan.

37
38 Steve Barnowe-Meyer, WFFA, said they support Policy’s consensus recommendations being
39 presented to the Board; however there are several issues remaining that they believe would
40 benefit from further discussions within Policy. He said that further recommendations for any
41 changes to rule or guidance must be based on science incorporated into the adaptive management
42 process and any proposed alternatives to clarify and improve the determination of the F/N break
43 must be evaluated against the Board’s August 2015 expectations and the performance targets of
44 the Forests and Fish Report.

1 Jill Silver, 10,000 Years Institute, provided comments related to off-channel habitat, specifically
2 of her experience in how the rules are implemented regarding typing of off-channel habitat, and
3 protection of streams. She said that electrofishing does not work for off-channel habitat because
4 it is a complicated type of habitat. She encouraged the Board to consider the loss of refuge
5 habitat and optimal fish survival based on their capacity to get out of hostile environments.

6 7 **TFW POLICY COMMITTEE'S RECOMMENDATIONS ON WATER TYPING**

8 Adrian Miller and Ray Entz, co-chairs, Hans Berge, DNR, provided a brief overview of Policy's
9 process, discussions, and decisions made on the water typing recommendations. They also
10 presented the consensus recommendations which included the following:

11
12 Elements of the current rule that will remain unchanged:

- 13 • Accept the parts of WACs 222-16-030 and -031 for Type F Waters pertaining to flowing
14 waters and other Type F features.
- 15 • Wetlands typing system, definition of wetlands, and riparian management zone buffers
- 16 • Definitions of fish habitat and bankfull width.

17 Elements requiring further clarification or additional work for a permanent rule:

- 18 • Fish habitat water type map modification forms (WTMF)
 - 19 ○ Retain interdisciplinary team process under WACs 222-16-030 and -031
 - 20 • Water typing model
 - 21 ○ Accept initial pilot as proof of concept and continue development of fish habitat
 - 22 model including field validation.
 - 23 ○ Policy supports funding efforts for the water typing model project.
 - 24 ○ As new modelled maps are adopted by the Board, they will become the regulatory
 - 25 F/N breaks except for previously-approved WTMF points.
 - 26 • Existing mapped Type F/N breaks will be the starting points for applying the fish habitat
 - 27 assessment method.
 - 28 • Adequately define bed and banks of flowing water.
 - 29 • Physical defaults can be used for Forest Practices Application (FPA) purposes

30 Additional language to include:

- 31 • General objectives for the water typing system: highly accurate, minimize error, and
32 balance remaining error (reduce systematic bias).
- 33 • Consistently implementable in the field.

34
35 Also presented were the non-consensus elements:

- 36 • The definition of off-channel habitat
- 37 • The use of physical defaults for Type F/N Waters
- 38 • The connectivity of flowing Type F waters
- 39 • How permanent natural barriers are evaluated and defined
- 40 • LiDAR-derived model

41
42 Additional consensus recommendations included:

- 43 • Requests for DNR include notification for certain existing Type F/N points and interim guidance
44 for the upcoming field survey season.
- 45 • Training program for the new water typing rule and Board Manual Section 23.

1 Bob Guenther asked if science shows how many fish return from using a flood plain. Entz
2 responded that there is no science to support this, but the rule states that once fish are present it is
3 a Type F Water. Hans Berge, DNR, added that science shows fish can go into those areas and
4 sometimes it's a dead end, and sometimes not and that the ones that do survive grow better and
5 perform better.

6
7 Paula Swedeen asked for clarification regarding differing opinions on the process to invoke
8 dispute resolution when it seemed that dispute resolution was previously invoked and how that
9 disagreement get resolved. Miller responded that is a question for the Board's attorney so the
10 Board could provide clear direction to Policy.

11
12 The Board continued discussions on whether dispute resolution needs to occur for the remaining
13 non-consensus issues and at what point if Policy exhausts all possibility to reach consensus the
14 Board makes the final decision. The Board acknowledged time sensitivity resulting from the
15 options, but no decision was made regarding the next steps for dispute resolution.

16 17 **CAUCUS COMMENTS**

18 Bernath invited Policy leads to provide the Board with what direction they think would be
19 helpful in moving forward on the non-consensus issues, specifically regarding off-channel
20 habitat, use of water type modification forms and the development of the fish habitat assessment
21 methodology.

22
23 Karen Terwilleger, WFFPA, said she believes there are possibly three paths 1-Policy continues
24 further discussions with current systems and not invoke dispute resolution; 2-physical defaults
25 stay the same if there is no consensus to change the rule; or 3-invoke the dispute resolution
26 process. She said the dispute resolution process makes the most sense.

27
28 Steve Barnowe-Meyer, WFFA, said he believes it is worthwhile to continue some of the
29 discussions and supports the dispute resolution process.

30
31 Kendra Smith, Association of Counties, said they believe the process identified in WAC 222-12-
32 045 for formal dispute resolution when there is not-consensus needs to be adhered to for both
33 obtaining a record for the Board and to avoid a misguided precedence for the future.

34
35 Marty Acker, Federal services, said there is a misplaced expectation that Policy will fill in all the
36 details for an implementation-ready procedure on a habitat assessment method. He said the
37 Board is empowered to take Policy's recommendation to move towards a habitat assessment
38 method and to assign appropriate parties to fill in those details.

39
40 Terry Jackson, Washington Department of Fish and Wildlife, said it is likely a habitat assessment
41 methodology will be the most difficult to reach consensus on. She recommended the Board
42 provide incentives for Policy to be accountable and to make progress on the habitat assessment
43 methodology and to get a final rule and board manual. She also recommended the Board
44 consider removing "balancing remaining error", or provide direction that it not become a
45 stumbling block for moving forward on the habitat assessment methodology. She also suggested

1 that interdisciplinary teams can be used to identify off-channel habitat. She said it could also
2 provide an opportunity to document those examples for future adaptive management decisions.

3
4 Rich Doenges, Department of Ecology, said he supports dispute resolution as an option for an
5 expedited process with focused efforts.

6 Mary Scurlock, Conservation Caucus, said it is time for the Board to fill in the gaps and make
7 the decisions. She said they do not support dispute resolution. She said they believe LiDAR
8 acquisition is key and the most important step to take to improve stream typing. She said they
9 would like upstream fish presence to override everything, including modeled and surveyed
10 points to be in rule and would like the Board to consider non-consensus alternatives in the form
11 of minority reports from the respective caucus.

12
13 Jim Peters, Northwest Indian Fisheries Commission, said the bottom line for Western
14 Washington tribes is to protect salmon and fish habit. He said how we get there doesn't matter;
15 however he would like to move forward with rule making. He said they would support dispute
16 resolution if invoked.

17
18 Ray Entz, Eastern Washington Tribes, said Policy is a process without accountability. He said
19 Policy is not accountable to the Board because they do not appoint the members of Policy. He
20 said this needs to change and the Board should provide that leadership. He said dispute
21 resolution could be a way to affirm accountability but it is not a guarantee. He said at this point it
22 is a Board decision and not appropriate to be given back to Policy.

23 24 **PUBLIC COMMENT ON AERIAL APPLICATION OF PESTICIDE**

25 Ray Entz, Kalispel Tribe and Upper Columbia of United Tribes, said they are committed to
26 cooperation and making progress towards notification, improved description, reporting and
27 monitoring of the use of forest chemicals. He said he is encouraged and as long as progress is
28 made they will not resubmit their petition for rule making.

29
30 Heather Hansen, Washington Friends of Farms and Forests, said that there have been no
31 substantiated incidents of drifts from FPAs in Washington and that forest applicators already
32 provide more notice to the public through both the existing permit system and required posting
33 than any other type of applicator in Washington or anywhere else in the country. She said most
34 timber companies go above and beyond what is required by communicating with neighboring
35 property owners before each application.

36
37 Doug Hooks, WFPA, said they worked with DNR on application changes and made significant
38 improvements. He said the interactive Forest Practices Application Review System is the
39 appropriate system for notification and suggests a voluntary process to see if it works before
40 engaging in rule making.

41 42 **PESTICIDE WORK GROUP RECOMMENDATIONS**

43 Bernath reminded the Board that leading up to the May Board meeting, two petitions for rule
44 making were received. He said he talked with the petitioners, along with forest landowners and
45 agencies, into withdrawing the petitions and establishing an informal workgroup to see if they
46 could address concerns through administrative means.

1 Donelle Mahan, DNR, provided a brief overview of the past meeting topics discussed and an
2 update on the current focus, clarification to the current aerial Forest Practices Application (FPA)
3 and the group’s recommendations.

4
5 Since the August Board meeting, she said the final topic was to edit the FPA to make it clearer.
6 Mahan identified the changes made to the FPA, which included adding unit numbers and adding
7 active ingredients/acres treated.

8
9 She concluded by providing DNR’s recommendations:

- 10 • Finalize FPA clarifications
- 11 • Provide aerial spray best management practices, including voluntary reporting on chemicals
12 used
- 13 • Update Board Manual Section 12
- 14 • Update Forest Practices Illustrated

15
16 She indicated that it would be at least a year to complete the revisions for the board manual and
17 the Forest Practices Illustrated. She said the group will meet one more time to finalize the
18 revisions to the application.

19 20 **CULTURAL RESOURCES UPDATE**

21 Stephen Bernath said last May DNR contracted with Thompson Consulting Group to assist the
22 state (DNR and DAHP) in having facilitated conversations with the tribes and large and small
23 forest landowners on how to approach the protection of cultural resources within the forest
24 practices regulatory scheme. Bernath provided the following status update:

- 25 • A sub-group has met and has made progress for discussing how to trigger a landowner/tribal
26 meeting regarding tribal cultural resources.
- 27 • Discussions occurring on providing adequate funding for DNR to focus training,
28 communication and facilitation of cultural resource issues between landowners and tribes;
29 whether there is a need for potential state legislation to facilitate these changes; and for
30 accountability in the process and protection of cultural resources.

31
32 Bernath said the group is planning one more sub-group meeting and hopes to finish with a large
33 group meeting so proposals can move forward in a timely fashion.

34
35 He asked that if there are any questions to please contact WFPA, WFFA, tribes, or himself.

36
37 Meeting adjourned at 2:05 p.m.

1 **FOREST PRACTICES BOARD**

2 **Regular Board Meeting**

3 November 9, 2016

4 Natural Resources Building, Room 172

5 Olympia, Washington

6
7 **Members Present**

8 Stephen Bernath, Chair, Department of Natural Resources

9 Bill Little, Timber Products Union Representative

10 Bob Guenther, General Public Member/Small Forest Landowner

11 Brent Davies, General Public Member

12 Carmen Smith, General Public Member/Independent Logging Contractor (participated 10-11:30 a.m.)

13 Court Stanley, General Public Member

14 Dave Herrera, General Public Member

15 Heather Ballash, Designee for Director, Department of Commerce

16 Joe Stohr, Designee for Director, Department of Fish and Wildlife

17 Lisa Janicki, Elected County Official

18 Patrick Capper, Designee for Director, Department of Agriculture

19 Paula Swedeen, General Public Member

20 Tom Laurie, Designee for Director, Department of Ecology

21
22 **Staff**

23 Joe Shramek, Forest Practices Division Manager

24 Marc Engel, Forest Practices Assistant Division Manager

25 Patricia Anderson, Rules Coordinator

26 Phil Ferester, Senior Counsel

27
28 **WELCOME AND INTRODUCTIONS**

29 Stephen Bernath called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

30
31 **APPROVAL OF MINUTES**

32 **MOTION:** Tom Laurie moved the Forest Practices Board approve the August 10, 2016
33 meeting minutes as amended.

34
35 **SECONDED:** Bob Guenther

36
37 Bernath amended page 2, first sentence under Clean Water Act Assurances to read as follows:
38 “Bernath said the initial Clean Water Act Assurances review ~~should have~~ occurred in 2009;
39 however . . .”

40
41 **ACTION:** Motion passed unanimously.

42
43 **REPORT FROM CHAIR**

44 Bernath reported on DNR’s proposed budget for forest practices including requests for additional
45 monies for the Small Forest Landowner office (just under \$1 million additional requested for 4
46 additional positions in the SFLO), Family Forests Fish Passage Program (\$10 million requested v.

1 \$5 million in current budget), Forestry Riparian Easement Program (\$10 million requested v. \$3.5
2 million in current budget), and the Riparian Habitat Open Space Program (\$6.2 million requested
3 v. \$1.0 million in current budget).

4
5 **PUBLIC COMMENT**

6 None.

7
8 **TFW POLICY COMMITTEE'S TYPE F RECOMMENDATIONS**

9 Based on yesterday's meeting, Marc Engel, DNR, provided recommendations on potential next
10 steps the Board could take on the unresolved water-typing system issue and options for dispute
11 resolution. Recommendations included:

- 12 • File a CR-101 Preproposal Statement of Inquiry to notify the public the Board is considering
13 rule making on a permanent water typing system.
- 14 • Accept Policy's consensus recommendations for a permanent water typing system and direct
15 staff to develop draft rule language and board manual guidance.
- 16 • Accept Policy's recommended process to develop the fish habitat assessment methodology to
17 evaluate and develop consensus recommendation(s) and present to the Board at the May
18 2017 meeting.
- 19 • Direct Policy to finalize decisions regarding off-channel habitat at their December 2016
20 meeting to:
 - 21 ○ Develop consensus recommendations to be presented at the February 2017 Board
22 meeting; or,
 - 23 ○ Formally initiate a dispute resolution process to be completed by May 1, 2017 and
24 present recommendations to the Board at their May 2017 meeting.
- 25 • Direct Policy to finalize decisions related to acceptance of completed Type F/N points
26 through Water Typing Modification Forms as the regulatory fish habitat points in the Fish
27 Habitat Water Typing Map at their December 2016 meeting to:
 - 28 ○ Develop consensus recommendations to be presented to at the February 2017 Board
29 meeting; or,
 - 30 ○ Formally initiate a dispute resolution process to be completed by May 1, 2017 and
31 present recommendations at the May Board meeting.
- 32 • Direct Policy to make decisions related to the manner in which default physicals will be used
33 to determine the Type F/N points as the regulatory fish habitat points in the Fish Habitat
34 Water Typing Map at their December 2016 meeting to:
 - 35 ○ Develop consensus recommendations and present to the Board at the February 2017
36 meeting; or,
 - 37 ○ Formally initiate a dispute resolution process to be completed by May 1, 2017 and
38 present recommendations to the Board at the May meeting.
- 39 • Approve funding for up to \$500,000 to continue development of the Water Typing Fish
40 Habitat Model and the evaluation of default physical criteria using existing fund balance in
41 the Forests and Fish Support Account.

42
43 Joe Stohr asked if it is realistic to spend \$500,000 in the next six months on the modeling. Hans
44 Berge, DNR, said to accomplish the modeling by the end of the biennium probably not, but the
45 proposed fixes could be completed immediately and developing a study design for the science

1 recommendation related to water typing could also have significant progress made by the end of
2 the biennium.

3
4 Stohr also suggested including explicit direction to ensure the recommendations remain intact so
5 rule making does not move forward unless it's a complete package.

6
7 Paula Swedeen asked if DNR will issue any interim guidance. Bernath said that interim guidance
8 will be provided for the next field season.

9
10 **PUBLIC COMMENT ON TYPE F RECOMMENDATIONS**

11 Ken Miller, Washington Farm Forestry Association (WFFA), shared his views on the
12 disproportionate impact to small forest landowners and the need for science. He said on-going
13 water typing discussions are focused on the small upper reaches of streams that don't have any
14 fish, but areas that might be usable by fish in the future. He said these debates seemed to be
15 about whether or not to protect these areas, yet he believes the underlying debate is really about
16 how much protection (how many trees) is needed. He said despite small landowner's skepticism
17 of Forests and Fish, they are committed to following the science and said buffer widths should be
18 based on the size of the streams, the needs of critters using these streams, and the economic
19 viability of landowner protecting the streams. He stressed we should avoid wasting everyone's
20 resources on mostly academic issues like this one until the science says it is really needed.

21
22 Norm Schaaf, Merrill & Ring, provided results from 877 protocol surveys used during the years
23 2002-2016. The data included totals for Type F and Type N streams. He said he wanted to point
24 out that it is difficult to develop a model that has the accuracy required in rule and that protocol
25 surveys can be a tool to achieve resource protection. He said he supports Policy's
26 recommendations.

27
28 Chris Northcut, Merrill Ring, said that there is no substitute for a trained professional surveyor to
29 determine the Type F/N break. He said surveyors should minimize the shocking where fish are
30 known and focus on where fish are absent. He said that ID teams are an essential management
31 tool.

32
33 Nicole Kimsey, Merrill Ring, said a model and default physicals are good tools and that the
34 company relies on their field experts for field calls. She indicated that the process, the rules and
35 the current guidance is working for them in the field and questioned why fix something that is
36 not broken.

37
38 Tom Nelson, Sierra Pacific Industries, said he believes the Board is considering options to
39 change the original premise of the Forests and Fish agreement, to erode the regulatory certainty,
40 and impose a "RMAP II" through rule making, which seeks to impose wide buffers and fish-
41 passable road crossings in locations where fish are not proven to exist. He said this would
42 impose a huge financial burden on landowners and fail to meet the spirit and standards agreed to
43 within the Forests and Fish agreement.

44
45 John Gold, Sierra Pacific Industries, provided comments on off-channel habitat and how it is not
46 difficult to identify and delineate. He said he supports the findings of the off-channel habitat

1 technical group recommending CMER study to determine if there are types of habitats not being
2 captured. He said until we have any science suggesting there is inadequate protection,
3 substantive rule changes are premature; however an administrative change clarifying that off-
4 channel habitat applies equally to Type 2 and Type 3 waters reflects current understanding and
5 would be appropriate. He said he supports the development of written guidance to help cement
6 implementation consistency.

7
8 Nathan Putnam, SDS Lumber Company, said the practice of going out in the field to survey is
9 working, that it is good work and it should stand. He said in order to go forward we need to keep
10 looking behind us to see where it started and to trust what has been built.

11
12 Claudine Reynolds, Port Blakely Tree Farms, provided information on water type modification
13 and site identification team process. She said all streams located within or adjacent to a proposed
14 harvest unit are required to be identified and 'typed' in the forest practices application. She said
15 the forms are designed to quantify stream physical characteristics and give reviewers an accurate
16 account of the stream attributes so that they can make the decision to approve, reject, or modify
17 the change. Based on her professional experience, she feels the current process is effective, and
18 the process to collect stream data is science-based and data rich.

19
20 Bill Monahan, Rayonier, provided an overview of their work on typing streams. He said a solid,
21 reliable process matters and it gives stakeholders continuity. He also said there is difficulty
22 relying on just physical defaults. He said the current process of using protocol surveys is
23 protecting fish and their habitat. He said they are supportive of continuing to use site-specific
24 stream protocol survey with consideration to physicals and supportive of modifying some of the
25 water typing procedures if they are reviewed and approved through the adaptive management
26 process. He said they are supportive of the recommendations.

27
28 Julie Dieu, Rayonier, said she supports the consensus rule clarifications. She also provided
29 comments regarding buffers for Type Np waters and how unstable slopes provide additional
30 protections above Type F waters. She said they conduct protocol surveys to locate the last fish
31 and then above that, the last viable habitat. Above this habitat, streams become smaller and
32 steeper, and are identified as Type N because fish are unlikely to be present. Occasionally the
33 buffering doesn't stop right at the top of fish habitat, but continues further up the hill.

34
35 Kendra Smith, Association of Counties, acknowledged the hard work and progress Policy has
36 been made. She said the counties believe it is important to have science be the driving basis for
37 making any recommendations to the Board. They believe that the completed F/N break points
38 established through the WTMF process that have been accepted over the past 20 years as
39 regulatory points, need to remain. They firmly believe science should be used for basing
40 decisions upon as changes are made to the rule and the board manual. This is what adaptive
41 management is about and what all of us signed up for in making the best-informed decisions
42 possible. She said she is not so sure the water typing procedure/process is broken, but with
43 science based information we can make well informed decisions to move forward.

44 Mary Scurlock, Conservation Caucus, said a system that works is needed whether or not we
45 actually go forward with and succeed in producing an implementable LiDAR-based model. She
46 said they agree that the Board should put the substance of what Policy should do first and not get

1 hung up on what should be in rule versus board manual for either consensus or non-consensus
2 items. However she said one specific concept needs to be in rule--upstream fish presence
3 overrides everything, including modeled and surveyed streams. She said they do not want a long
4 science process before Board action on non-consensus items and that dispute resolution need not
5 be triggered to release the Board to consider non-consensus alternatives.
6

7 Peter Goldman, Conservation Caucus, asked the Board to move forward on the consensus items
8 even though they may not be fully developed. He said he does not support dispute resolution and
9 asked the Board to: 1-request at their February 2017 meeting, a detailed update on the status of
10 the dispute and the non-consensus issues; 2-request at their February 2017 meeting, an update on
11 whether or not further mediation would be a futile process; and 3-direct Board Counsel to release
12 advice on whether dispute resolution is necessary based on the rules. He said they are committed
13 to resolving the issues.
14

15 Chris Mendoza, Conservation Caucus, reinforced their view regarding wetlands as off-channel
16 habitat. He said they disagree with DNR in that ordinary high water mark (OHWM) by definition
17 should be used. He suggested rule and board manual guidance on OHWM not be limited to
18 bankfull width.
19

20 Kevin Godbout, Weyerhaeuser Company, said they support the recommendations provided by
21 Policy. He also commented on the importance of fish surveys and that they believe
22 current survey points should be fully incorporated as permanent fish habitat regulatory
23 determinations.
24

25 Karen Terwilleger, WFPA, provided three key elements for a new water typing system to work:
26 1-good transparent and user friendly maps to start the process; 2-good board manual language as
27 well as clear rules that are implementable, repeatable and enforceable and meet the Forests and
28 Fish objectives; 3-a better documented process is needed to move forward that does not preclude
29 existing data. She said they strongly support Policy's recommendations.
30

31 Ray Entz, Kalispel Tribe of Indians and Upper Columbia of United Tribes, said they recognize
32 the concern around the uncertainty with changes regarding water typing and encouraged the
33 Board to find balance as they move forward and engage their stakeholders. He would like to find
34 ways to get collaborative outcomes.
35

36 **PUBLIC COMMENT (PM)**

37 Ken Miller, WFFA, provided an update on the small forest landowner's alternate plan template
38 for harvest prescriptions. He said they plan to bring a draft template for an eastside template at
39 the February 2017 Board meeting. He also invited the Board to visit his tree farm as part of the
40 Board's 2017 work plan.
41

42 **TFW POLICY COMMITTEE'S TYPE F RECOMMENDATIONS**

43 Marc Engel, DNR, building on what was presented earlier, reviewed the recommendations for
44 the Board consideration to initiate and develop a permanent water typing system rule:

- 45 • Direct staff to file a CR-101 Preproposal Statement of Inquiry

- 1 • Accept Policy Committee’s consensus recommendations and direct staff to initiate draft rule
- 2 language and board manual guidance.
- 3 • Accept Policy’s recommended process to develop the fish habitat assessment methodology.
- 4 • Direct Policy to make decisions regarding off-channel habitat.
- 5 • Direct Policy to make decisions related to acceptance of completed Type F/N points through
- 6 Water Typing Modification Forms.
- 7 • Direct Policy to make decisions related to the manner in which default physicals will be used
- 8 to determine the Type F/N points as the regulatory points.
- 9 • Approve funding for up to \$500,000 to continue development of the Water Typing Fish
- 10 Habitat Model and the evaluation of default physical criteria.

11
12 The Board took the following action based on the recommendations presented by Engel.

13 **MOTION:** Heather Ballash moved the Forest Practices Board direct staff to file a CR-101
14 Preproposal Statement of Inquiry to notify the public the Board is considering rule
15 making relating to a permanent Water Typing System.

16
17 **SECONDED:** Tom Laurie

18
19 Board Discussion:
20 Bernath provided an overview of the purpose of the CR-101.

21
22 **ACTION:** Motion passed unanimously.

23
24 **MOTION:** Court Stanley moved the Forest Practices Board accept the TFW Policy
25 Committee consensus recommendations for a permanent Water Typing System
26 and direct staff to prepare draft rule language and prepare Board Manual Section
27 23, as necessary, in consultation with stakeholders, to be presented to the Board at
28 their May 2017 meeting. (Note: Until the Board receives recommendations from
29 TFW Policy or a majority/minority report from the Adaptive Management
30 Program Administrator resulting from dispute resolution for the Fish Habitat
31 Assessment Methodology; off-channel habitat, use of default physicals, and the
32 status of existing Type F/N regulatory break points established through Water
33 Type Modification forms, the staff will not move the rule making forward to a
34 CR-102.)

35
36 **SECONDED:** Tom Laurie

37
38 Board Discussion:
39 None.

40
41 **ACTION:** Motion passed unanimously.

42
43 **MOTION:** Patrick Capper moved the Forest Practices Board accept the TFW Policy
44 Committee recommended process to consider alternatives and develop a Fish
45 Habitat Assessment methodology and direct TFW Policy to work with the
46 Adaptive Management Program Administrator to evaluate and develop consensus

1 recommendation(s) and present the completed methodology for Board
2 consideration and action at their May 2017 meeting.

3
4 **SECONDED:** Lisa Janicki

5
6 Board Discussion:

7 Paula Swedeen asked for clarification on the intent of this motion which resulted in a friendly
8 amendment of the original motion. The friendly amendment clarified that Policy would consider
9 alternative methodologies for the development of the recommended method.

10
11 **ACTION:** Motion passed unanimously.

12
13 Direction to TFW Policy regarding non-consensus issues

14 **MOTION #1:** Joe Stohr moved the Forest Practices Board direct the TFW Policy Committee to
15 determine at or before their December 2016 meeting if consensus
16 recommendations related to off-channel habitat can be presented to the Board at
17 their February 2017 meeting; OR - the TFW Policy Committee initiates and
18 completes Dispute Resolution by May 1, 2017. TFW Policy will deliver
19 consensus recommendations as a result of dispute-resolution or the Adaptive
20 Management Program Administrator will deliver the majority/minority report at
21 the May 2017 Board meeting, per WAC 222-12-045.

22
23 **SECONDED:** Paula Swedeen

24
25 Board Discussion:

26 None.

27
28 **ACTION:** Motion passed unanimously.

29
30 **MOTION #2:** Heather Ballash moved the Forest Practices Board direct the TFW Policy
31 Committee to determine at or before their December 2016 meeting if consensus
32 recommendations related to acceptance of completed Type F/N points through
33 Water Typing Modification Forms as the regulatory fish habitat points in the Fish
34 Habitat Water Typing Map can be presented to the Board at their February 2017
35 meeting; OR - the TFW Policy Committee initiates and completes Dispute
36 Resolution by May 1, 2017. TFW Policy will deliver consensus recommendations
37 as a result of dispute-resolution or the adaptive management program
38 administrator will deliver the majority/minority report at the May 2017 Board
39 meeting, per WAC 222-12-045.

40
41 **SECONDED:** Brent Davies

42
43 Board Discussion:

44 None.

45
46 **ACTION:** Motion passed unanimously.

1 **MOTION #3:** Lisa Janicki moved the Forest Practices Board direct the TFW Policy Committee
2 to determine at or before their December 2016 meeting if consensus
3 recommendations related to the manner in which default physicals will be used to
4 determine the Type F/N points as the regulatory fish habitat points in the Fish
5 Habitat Water Typing Map can be presented to the Board at their February 2017
6 meeting; OR - the TFW Policy Committee initiates Dispute Resolution and
7 completes it by May 1, 2017. TFW Policy will deliver consensus
8 recommendations as a result of dispute-resolution or the Adaptive Management
9 Program Administrator will deliver the majority/minority report at the May 2017
10 Board meeting, per WAC 222-12-045.

11
12 **SECONDED:** Bob Guenther

13
14 Board Discussion:
15 None.

16
17 **ACTION:** Motion passed unanimously.

18
19 **MOTION:** Tom Laurie moved the Forest Practices Board approve funding for continued
20 development of the Water Typing Fish Habitat Model and evaluation of default
21 physical criteria using existing fund balance in the Forests and Fish Support
22 Account. Funding up to \$500,000 is authorized before 30th June 2017 to:
23 • Refine and redevelop the model and prepare a study design for field
24 validation; and
25 • Create a study design to evaluate the existing default physical habitat criteria.
26 Funding is contingent on consensus from the TFW Policy Committee.

27
28 **SECONDED:** Heather Ballash

29
30 Board Discussion:
31 Lisa Janicki shared her concern in how \$500,000 will be spent in the next seven months. Hans
32 Berge, DNR, said that there are improvements to the model that can happen immediately that
33 will be beneficial in moving forward. He also said that part of the money will go towards a study
34 design to look at the bigger picture of the issues to be resolved. Berge acknowledged and said he
35 will report on the status and progress at the February 2017 meeting.

36
37 **ACTION:** Motion passed unanimously.

38 **RMAPS UPDATE**

39
40 Bernath said a cornerstone of the Forests and Fish law was a commitment to fix roads in the near
41 term of the 50-year agreement while riparian areas recovered providing the five riparian
42 functions needed for fish habitat and water quality. He said road fixes provided mitigation in the
43 short term while riparian areas grew back over the following decades. He said large forest
44 landowners were given 15 years initially to fulfill this commitment, and that the rule was
45 subsequently changed to allow landowners to request extensions for those companies impacted
46 by the recession and unable to achieve the initial commitments.

1 Bernath said that significant investments have been made by both private landowners and the
2 state to repair and abandon roads, and fix fish passage barriers. The added that large private
3 landowners committed to do this without any state assistance.
4

5 Bernath said that Donelle Mahan would provide an update on Road Maintenance Abandonment
6 Plans (RMAP) that were to be completed by October 31, 2016, and would describe how DNR
7 field compliance will be applied regarding landowners that did not complete their plans on
8 schedule. He concluded by indicating that he will be working with Department of Ecology to
9 identify a way to celebrate these successes.
10

11 Donelle Mahan, DNR, said large forest landowners were required to have all roads within their
12 ownership covered under a DNR approved RMAP by July 1, 2006 and to bring all roads into
13 compliance with forest practices standards by October 31, 2016. She said due to the economic
14 downturn in 2008/2009, a new rule allowed large forest landowners to extend their plans to
15 October 31, 2021.
16

17 She said the October 31 date allows landowner to complete their field operations during the dry
18 season and within appropriate fish windows.
19

20 As of December 31, 2015, 260 RMAPs have been approved. She reported that 182 were
21 completed by October 31, 2016 and that another 58 plans had approved extensions. Twenty plans
22 were incomplete as of the deadline.
23

24 Tom Laurie asked how compliance is reported. Mahan responded that field reviews occur during
25 compliance checks and are prioritized based on the type of RMAP work.
26

27 **BOARD MANUAL SECTION 16 IMPLEMENTATION UPDATE**

28 Donelle Mahan, DNR, provided an update on how information about potentially unstable slopes
29 is required in the Forest Practices Application and on how the amended guidance in Board
30 Manual Section 16 is being implemented by field practitioners and qualified experts.
31

32 She said training was conducted for DNR staff, after which DNR delivered the training to the
33 TFW stakeholder community. She said most landowners are:

- 34 • making sure their qualified experts are following the rules;
- 35 • providing adequate information on the slope stability information form;
- 36 • incorporating the qualified expert's mitigation measures in FPA Question 31; and
- 37 • ensuring the FPA, slope stability information form, qualified expert memo/letter or report and
38 the SEPA checklist have matching information.
39

40 **STAFF REPORTS**

41 Northern Spotted Owl Implementation Team (NSOIT) Update

42 Bernath stated Lauren Burnes and the Safe Harbor Agreement subgroup of the NSOIT have been
43 making significant progress on a draft Safe Harbor Agreement. He asked Burnes to provide the
44 Board with a substantive update to prepare the Board for the February meeting, in the event an
45 agreement is reached, and reviewed with the Board for any necessary Board action.
46

1 Lauren Burnes, DNR, said a priority of the NSOIT has been the development of a voluntary,
2 “opt-in” programmatic Safe Harbor Agreement (SHA) for the Northern Spotted Owl, as directed
3 by the Board. She said the primary objective is to incentivize private landowners to undertake
4 voluntary conservation measures that will benefit the owl by creating, maintaining, or enhancing
5 its habitat.

6
7 She explained how a SHA would work by providing Endangered Species Act regulatory
8 assurances to eligible landowners through the issue of a certificate on inclusion. The program
9 focuses on providing a net benefit to owls through the establishment of baseline conditions and
10 proposed conservation measures for enhancing owl habitat. She described how the development of
11 baseline conditions evaluates a landowner’s current forest condition to build on a net conservation
12 benefit through goals focused on habitat enhancement.

13
14 She said the timeline is to develop the draft programmatic SHA for USFWS by end of 2016 and
15 begin NEPA Environmental Assessment by early 2017.

16
17 There were no questions for the following reports:

- 18 • Adaptive Management Update
- 19 • Small Forest Landowner Advisory Committee and Small Forest Landowner Office Update
- 20 • Upland Wildlife Update

21 22 **2017 WORK PLANNING**

23 Marc Engel, DNR, reviewed the 2017 proposed work plan and provided updates to the work plan
24 as a result of today’s meeting.

25
26 Additional development of Policy’s recommendations to the Board for off-channel habitat, the
27 use of Type F/N points through the water type modification form process, default physicals, and
28 Policy’s decision for funding for the model and physicals will be added to the 2017 work plan.

29
30 **MOTION:** Joe Stohr moved the Forest Practices Board approve updates to the 2017 Board
31 Work Plan as a result of actions taken today.

32
33 **SECONDED:** Bill Little

34
35 **ACTION:** Motion passed unanimously.

36 37 **EXECUTIVE SESSION**

38 The Board convened executive session from 2:30 - 2:50 p.m.

39
40 Meeting adjourned at 2:50 p.m.