Members Present

Stephen Bernath, Chair, Department of Natural Resources
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Dave Herrera, General Public Member
Jeff Davis, Designee for Director, Department of Fish and Wildlife
Patrick Capper, Designee for Director, Department of Agriculture
Paula Swedeen, General Public Member
Tom Nelson, General Public Member

Members Participating by Phone

Ben Serr, Designee for Director, Department of Commerce
Brent Davies, General Public Member
Lisa Janicki, Elected County Official
Noel Willet, Timber Products Union Representative

Members Absent

Tom Laurie, Designee for Director, Department of Ecology

Staff

Joe Shramek, Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Senior Counsel

WELCOME AND INTRODUCTIONS

Chair Bernath called the Forest Practices Board (Board) meeting to order at 10:30 a.m.
Introductions of Board members and staff were made.

NEXT STEPS FOR THE WATER TYPING SYSTEM RULE

Chair Bernath said the purpose for today’s special meeting is to decide next steps for the permanent water typing system rule.

Marc Engel, Department of Natural Resources (DNR), presented DNR staff recommendations for the Board’s consideration to develop a motion on next steps for the water typing system rule. The recommendations were based on the concepts discussed by Board members and input from public testimony at the May 2019 meeting. The recommendations included support for forming a Board committee to retain Board ownership of the development for the rule, topics for committee discussions and items to resolve including:

- Understanding the potential habitat break (PHB) spatial analysis and resolving whether the width-based PHB metric can be precisely estimated for the economic and environmental analyses;
• Determining if the Board can move toward fewer PHB options for inclusion in the rule analysis;
• Assessing whether the eastern Washington data used for the PHB spatial analysis is sufficient for rule making;
• Determining whether the PHB validation study should be implemented and, if so, should it be combined with the physicals stream study; and
• Determining the feasibility of moving toward a lidar-based model in rule language or non-rule options.

Engel recommended that the committee report back to the Board on progress at the August 2019 meeting and provide committee recommendations on how to move forward on the rulemaking at the November 2019 meeting.

Engel also recommended that the Board request the Timber, Fish and Wildlife (TFW) Policy Committee (Policy) provide objectives for an anadromous fish floor and existing road crossing structures for possible inclusion into the draft rule. To do this, Policy would develop either a final consensus recommendation or a majority/minority report as soon as possible. He suggested that staff continue working toward completing those aspects of the water typing system rule which are not dependent on the spatial analyses for the anadromous fish floor or PHB options, including the technical guidance, preliminary cost/benefit analysis (CBA), Small Business Economic Impact Statement (SBEIS) and environmental analysis based on the draft rule.

Board member Swedeen voiced concerns that these recommendations will create months of delay. She questioned the relevancy in the different spatial analysis outcomes performed by DNR and the industry caucus. She asked why DNR is recommending more time if DNR supposedly has all the necessary information.

Engel said that DNR provided the data and the methodology for the spatial analyses in December, 2018 to all stakeholders. The draft CBA was completed based on DNR’s spatial analysis. However, stakeholders have stated concerns about the spatial analysis. Staff recommendations are aimed at providing clarity on the intent of each proposed PHB option and may help the Board finalize one PHB for consideration. He reiterated that a full understanding of the PHB width metric and the anadromous fish floor concept is still unresolved between DNR and TFW caucuses.

Board member Swedeen asked if consensus is necessary for an analysis to go forward and asked where in rule or law it says every stakeholder needs to agree with DNR’s process.

Board member Nelson felt that gaining consensus was not the request, but that the Board had requested [August 2018 meeting] DNR check with each caucus to ensure DNR captured their proposal correctly. He felt that a revised rulemaking timeline would address these concerns and create a rule that is implementable.

Engel said additional work is needed on the economic analysis to ensure the values within the analysis are succinct enough for a thorough evaluation and to convene the work group to finish a qualitative analysis. He stated a precise timeline for completion is unknown, but said a status report could be provided at the August 2019 Board meeting. He said staff was waiting for the results of the spatial analysis performed for the CBA in order to complete the environmental analysis.
Board member Swedeen asked why the SEPA analysis is not complete since DNR has had the results of the spatial analysis since December.

Engel said there were elements in the CBA which addressed the environment and DNR wanted those results in order to complete the SEPA analysis.

Chair Bernath said the recommendation is to send the anadromous fish floor back to Policy and for Policy to report back to the Board through either a consensus recommendation or a majority/minority report as soon as possible.

Board member Davis said he does not foresee consensus being reached in Policy. He questioned the ability of Policy to provide a majority/minority report to the Board in a timely manner.

Engel briefly described the formal stages of dispute resolution. Per the process outlined in Board Manual Section 22, he said the fastest track would take approximately five months.

Terra Rentz, Policy co-chair, said Policy could delay work on Type N to address the issues being discussed today to accommodate the Board’s request. She said two to three meetings might be needed given the contentious issue.

PUBLIC COMMENT ON NEXT STEPS FOR THE WATER TYPING SYSTEM RULE

Ken Miller, Washington Farm Forestry Association (WFFA), said the issues before the Board are complex and that he believes the Board lacks understanding without a clearly defined problem. As a result, he suggested the ‘take no action option’ is looking to be a better rule option. He said small forest landowners need both technical assistance and a mapped-based rule for identifying Type F waters.

Jim Peters, Northwest Indian Fisheries Commission, said the Western tribes are working on a path forward for an anadromous fish floor. He said the process would follow the normal TFW ground rules and that the process would be governed by a charter with progress reports provided to the Board. He said the tribes intend to look at a few more watersheds and continue to work with the TFW caucuses to provide an anadromous fish floor recommendation in six months or perhaps at the November 2019 Board meeting.

Alec Brown, Washington Environmental Council, said he is frustrated to learn that the Board does not have a clarification on PHBs after all the work that has been done. He said he has not seen a clear problem statement defining this issue. He questioned why DNR has not provided the CBA to stakeholders yet. He used off-channel habitat as an example of a rule element that does not need to go back to Policy since the definition for off-channel habitat has already been decided through Policy.

Steve Barnowe-Meyer, WFFA, said all paths forward must be based on open collaboration and suggested future discussions should be opened to all caucuses. He implored the Board to clarify the problems with the current interim rule, clearly state the performance objectives for any new Type F rule, foster collaboration for understanding the spatial analysis, seek a single PHB alternative that meets the objective of a water typing system, develop cost effective evaluations for PHBs and the anadromous fish floor and fully fund the lidar-based model for depicting Type F waters.
Darin Cramer, Washington Forest Protection Association (WFPA), said the Board needs to be clear on performance objectives for this rule process. He requested that the spatial analysis be completed utilizing width parameters, and WFPA’s anadromous fish floor be included in the analysis, and that a field component for measuring PHBs and the anadromous fish floor occur. He concluded by suggesting all caucuses be involved in this process and for the Board to establish a timeline as soon as possible.

Martha Wehling, WFPA, encouraged the Board to review the minutes from the two water typing workshops held in 2016 and 2018 since many of these decisions have already been made. She said after review of three years of Board motions, WFPA was able to determine that the Board has completed three out of sixteen tasks—only 19%. She suggested the Board committee first address how the current rule is not meeting the goals and objectives of the Forest Practices rules. She asked the Board to request DNR provide complex motions to the public ahead of time so they can review the language and comment appropriately.

NEXT STEPS FOR THE WATER TYPING SYSTEM RULE

Board members discussed and deliberated on the appropriate language to refine a Board motion based on the recommendations presented by DNR staff.

Board member Nelson suggested that the Board committee be made up of an odd number of participants to avoid a stalemate when decisions are made, and suggested that the committee work under a charter or other formal process.

Board member Swedeen questioned why the lidar-based mapping element is mentioned in the recommendation. She believes the lidar study was already funded and prioritized. She questioned why the recommendation includes having staff continue working on the water typing system rule.

Chair Bernath acknowledged that the study design for lidar-based mapping project has been provided to Instream Scientific Advisory Group and said it is in response to small forest landowner concerns. In response to the rule, he suggested it would be beneficial to determine if 18 data points provide adequate information to support adoption of a new water typing rule for eastern Washington. He also stated that it would be helpful to explore the possibility of narrowing down the number of rule options that are being evaluated by staff. He said the list of outstanding issues proposed for resolution is intended to address comments made by Board members and by the public.

Board member Swedeen asked the Board to specify that the spatial analysis issue be made a priority and addressed first in order to complete the CBA and SEPA analysis as soon as possible.

Board member Davis agreed with Swedeen and suggested that the eastside data issue is another important item to address first.

Board member Nelson suggested that the Board committee and stakeholders come up with recommendations to resolve these issues rather than the Board.
Board member Davis felt that leaving the issues to the committee is ‘too loose’, but suggested adding language stating the committee’s role in coming up with recommendations would capture the Board’s intent.

Board member Swedeen said that she believes the anadromous fish floor was adequately discussed at Policy. She said that giving the floor concept back to Policy to resolve might take several months, which would extend the timeline beyond November 2019. She asked if Policy could simply make a determination that it would take them a long time to sort out the anadromous fish floor concepts and recommend that the Board committee make the decision for a path forward.

Chair Bernath stated that Policy needs to clearly determine if they can reach consensus and if not, provide a majority/minority report in order to be properly before to the Board.

Board member Nelson said that he hesitates sending the anadromous fish floor concept back to Policy as a procedural process especially since they may be receiving additional analysis and information relevant to the anadromous fish floor.

Board member Herrera said he believes the concept for an anadromous fish floor was previously discussed at Policy, but was unsure if formal dispute resolution occurred. He anticipated, with further discussions, that Policy could decide on appropriate floor criteria.

Board member Swedeen suggested that Policy be tasked to determine if the anadromous fish floor was discussed as a concept and that if they found that no clear consensus was reached, Policy could recommend that the Board committee work on the floor using the tribes’ analysis to resolve this issue.

Rentz sought clarification regarding how the Board intends Policy to determine if sufficient discussions on the anadromous fish floor occurred. She asked for the Board to provide the threshold for determining the record on Policy’s discussions.

Board member Herrera said he believes the Board’s February 2018 motion which requested DNR to evaluate the three PHB options did include an anadromous fish floor. If a Policy discussion is necessary for the Board’s consideration, he said that the Board needs to be clear and have Policy fix it. He also asked for the Board to make the lidar model a stronger commitment.

Board members discussed the options for Policy to combine both decision points—anadromous fish floor and water crossing structures—and make a recommendation at one time or separate the two items and report on the water crossing item once the anadromous fish floor item was completed. Board members agreed that the floor concept was the priority and should be completed first.

Rentz felt that a discussion on the anadromous fish floor could occur within Policy in time for the Board’s August 2019 meeting, but did not think resolution on road crossing structures could occur by August. She said that Policy would have to adjust priorities to make this happen.
MOTION: Tom Nelson moved the Forest Practices Board establish a Board committee to facilitate staff and Policy caucuses’ discussions in order to make recommendations on outstanding issues associated with the proposed water typing system effort, specifically to:

- Priority one is to understand the spatial analysis and work to resolve whether width can be precisely estimated for the purposes of the required economic and environmental analyses;
- Determine how the rule making should be applied in eastern Washington;
- Determine if and when the PHB validation study should be done and whether it should be combined with the study to determine physicals; and,
- Determine if rule language, Board resolution, or other non-rule options would suitably encourage moving toward a Lidar modelled map-based water typing rule.
- Board committee shall work with stakeholders to resolve any outstanding issues regarding the anadromous floor.

- Request the Board committee to report back to the Board on progress at the August 2019 meeting; with recommendations on how to move forward on the water typing system rule at the November 2019 meeting.

- The Board directs TFW Policy to address first the anadromous floor and then road water crossing structures to recommend whether these items should be part of the water typing system rule. TFW Policy will report back to the Board committee as quickly as possible on each item.

- Request the Board chair to ensure that staff continues working toward completing those aspects of the water typing system rulemaking guidance, preliminary CBA/SBEIS and environmental analysis as the Board committee resolves outstanding issues. Board staff will provide an update at the August Board meeting.

SECONDED: Carmen Smith

Board Discussion:
Rentz said that she understands the motion’s intent is to request that Policy determine if an anadromous fish floor should be included in the water typing system rule and make a formal yes or no recommendation back to the Board. Policy will also determine if water crossing structures with a nexus of a water typing change should be addressed in rule.

ACTION: Motion passed unanimously (Janicki not available for vote).

The Board committee will be chaired by Board member Guenther and include Board members Davis, Herrera, Nelson and Swedeen.

Meeting adjourned at 2:10 p.m.