

1 **FOREST PRACTICES BOARD**
2 **Special Board Meeting – June 4, 2019**
3 Natural Resources Building, Room 172, Olympia, WA
4

5 **Members Present**

6 Stephen Bernath, Chair, Department of Natural Resources
7 Bob Guenther, General Public Member/Small Forest Landowner
8 Carmen Smith, General Public Member/Independent Logging Contractor
9 Dave Herrera, General Public Member
10 Jeff Davis, Designee for Director, Department of Fish and Wildlife
11 Patrick Capper, Designee for Director, Department of Agriculture
12 Paula Swedeen, General Public Member
13 Tom Nelson, General Public Member
14

15 **Members Participating by Phone**

16 Ben Serr, Designee for Director, Department of Commerce
17 Brent Davies, General Public Member
18 Lisa Janicki, Elected County Official
19 Noel Willet, Timber Products Union Representative
20

21 **Members Absent**

22 Tom Laurie, Designee for Director, Department of Ecology
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 Chair Bernath called the Forest Practices Board (Board) meeting to order at 10:30 a.m.
32 Introductions of Board members and staff were made.
33

34 **NEXT STEPS FOR THE WATER TYPING SYSTEM RULE**

35 Chair Bernath said the purpose for today's special meeting is to decide next steps for the permanent
36 water typing system rule.
37

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

- 44 • Understanding the potential habitat break (PHB) spatial analysis and resolving whether the
45 width-based PHB metric can be precisely estimated for the economic and environmental
46 analyses;

- 1 • Determining if the Board can move toward fewer PHB options for inclusion in the rule
2 analysis;
- 3 • Assessing whether the eastern Washington data used for the PHB spatial analysis is
4 sufficient for rule making;
- 5 • Determining whether the PHB validation study should be implemented and, if so, should it
6 be combined with the physicals stream study; and
- 7 • Determining the feasibility of moving toward a lidar-based model in rule language or non-
8 rule options.

9
10 Engel recommended that the committee report back to the Board on progress at the August 2019
11 meeting and provide committee recommendations on how to move forward on the rulemaking at the
12 November 2019 meeting.

13
14 Engel also recommended that the Board request the Timber, Fish and Wildlife (TFW) Policy
15 Committee (Policy) provide objectives for an anadromous fish floor and existing road crossing
16 structures for possible inclusion into the draft rule. To do this, Policy would develop either a final
17 consensus recommendation or a majority/minority report as soon as possible. He suggested that
18 staff continue working toward completing those aspects of the water typing system rule which are
19 not dependent on the spatial analyses for the anadromous fish floor or PHB options, including the
20 technical guidance, preliminary cost/benefit analysis (CBA), Small Business Economic Impact
21 Statement (SBEIS) and environmental analysis based on the draft rule.

22
23 Board member Swedeen voiced concerns that these recommendations will create months of delay.
24 She questioned the relevancy in the different spatial analysis outcomes performed by DNR and the
25 industry caucus. She asked why DNR is recommending more time if DNR supposedly has all the
26 necessary information.

27
28 Engel said that DNR provided the data and the methodology for the spatial analyses in December,
29 2018 to all stakeholders. The draft CBA was completed based on DNR's spatial analysis. However,
30 stakeholders have stated concerns about the spatial analysis. Staff recommendations are aimed at
31 providing clarity on the intent of each proposed PHB option and may help the Board finalize one
32 PHB for consideration. He reiterated that a full understanding of the PHB width metric and the
33 anadromous fish floor concept is still unresolved between DNR and TFW caucuses.

34
35 Board member Swedeen asked if consensus is necessary for an analysis to go forward and asked
36 where in rule or law it says every stakeholder needs to agree with DNR's process.

37
38 Board member Nelson felt that gaining consensus was not the request, but that the Board had
39 requested [August 2018 meeting] DNR check with each caucus to ensure DNR captured their
40 proposal correctly. He felt that a revised rulemaking timeline would address these concerns and
41 create a rule that is implementable.

42
43 Engel said additional work is needed on the economic analysis to ensure the values within the
44 analysis are succinct enough for a thorough evaluation and to convene the work group to finish a
45 qualitative analysis. He stated a precise timeline for completion is unknown, but said a status report
46 could be provided at the August 2019 Board meeting. He said staff was waiting for the results of the
47 spatial analysis performed for the CBA in order to complete the environmental analysis.

1 Board member Swedeen asked why the SEPA analysis is not complete since DNR has had the
2 results of the spatial analysis since December.

3
4 Engel said there were elements in the CBA which addressed the environment and DNR wanted
5 those results in order to complete the SEPA analysis.

6
7 Chair Bernath said the recommendation is to send the anadromous fish floor back to Policy and for
8 Policy to report back to the Board through either a consensus recommendation or a
9 majority/minority report as soon as possible.

10
11 Board member Davis said he does not foresee consensus being reached in Policy. He questioned the
12 ability of Policy to provide a majority/minority report to the Board in a timely manner.

13
14 Engel briefly described the formal stages of dispute resolution. Per the process outlined in Board
15 Manual Section 22, he said the fastest track would take approximately five months.

16
17 Terra Rentz, Policy co-chair, said Policy could delay work on Type N to address the issues being
18 discussed today to accommodate the Board's request. She said two to three meetings might be
19 needed given the contentious issue.

20
21 **PUBLIC COMMENT ON NEXT STEPS FOR THE WATER TYPING SYSTEM RULE**

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

27
28 Jim Peters, Northwest Indian Fisheries Commission, said the Western tribes are working on a path
29 forward for an anadromous fish floor. He said the process would follow the normal TFW ground
30 rules and that the process would be governed by a charter with progress reports provided to the
31 Board. He said the tribes intend to look at a few more watersheds and continue to work with the
32 TFW caucuses to provide an anadromous fish floor recommendation in six months or perhaps at the
33 November 2019 Board meeting.

34
35 Alec Brown, Washington Environmental Council, said he is frustrated to learn that the Board does
36 not have a clarification on PHBs after all the work that has been done. He said he has not seen a
37 clear problem statement defining this issue. He questioned why DNR has not provided the CBA to
38 stakeholders yet. He used off-channel habitat as an example of a rule element that does not need to
39 go back to Policy since the definition for off-channel habitat has already been decided through
40 Policy.

41
42 Steve Barnowe-Meyer, WFFA, said all paths forward must be based on open collaboration and
43 suggested future discussions should be opened to all caucuses. He implored the Board to clarify the
44 problems with the current interim rule, clearly state the performance objectives for any new Type F
45 rule, foster collaboration for understanding the spatial analysis, seek a single PHB alternative that
46 meets the objective of a water typing system, develop cost effective evaluations for PHBs and the
47 anadromous fish floor and fully fund the lidar-based model for depicting Type F waters.

1 Darin Cramer, Washington Forest Protection Association (WFPA), said the Board needs to be clear
2 on performance objectives for this rule process. He requested that the spatial analysis be completed
3 utilizing width parameters, and WFPA’s anadromous fish floor be included in the analysis, and that
4 a field component for measuring PHBs and the anadromous fish floor occur. He concluded by
5 suggesting all caucuses be involved in this process and for the Board to establish a timeline as soon
6 as possible.

7
8 Martha Wehling, WFPA, encouraged the Board to review the minutes from the two water typing
9 workshops held in 2016 and 2018 since many of these decisions have already been made. She said
10 after review of three years of Board motions, WFPA was able to determine that the Board has
11 completed three out of sixteen tasks—only 19%. She suggested the Board committee first address
12 how the current rule is not meeting the goals and objectives of the Forest Practices rules. She asked
13 the Board to request DNR provide complex motions to the public ahead of time so they can review
14 the language and comment appropriately.

15
16 **NEXT STEPS FOR THE WATER TYPING SYSTEM RULE**

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

19
20 Board member Nelson suggested that the Board committee be made up of an odd number of
21 participants to avoid a stalemate when decisions are made, and suggested that the committee work
22 under a charter or other formal process.

23
24 Board member Swedeen questioned why the lidar-based mapping element is mentioned in the
25 recommendation. She believes the lidar study was already funded and prioritized. She questioned
26 why the recommendation includes having staff continue working on the water typing system rule.

27
28 Chair Bernath acknowledged that the study design for lidar-based mapping project has been
29 provided to Instream Scientific Advisory Group and said it is in response to small forest landowner
30 concerns. In response to the rule, he suggested it would be beneficial to determine if 18 data points
31 provide adequate information to support adoption of a new water typing rule for eastern
32 Washington. He also stated that it would be helpful to explore the possibility of narrowing down
33 the number of rule options that are being evaluated by staff. He said the list of outstanding issues
34 proposed for resolution is intended to address comments made by Board members and by the
35 public.

36
37 Board member Swedeen asked the Board to specify that the spatial analysis issue be made a priority
38 and addressed first in order to complete the CBA and SEPA analysis as soon as possible.

39
40 Board member Davis agreed with Swedeen and suggested that the eastside data issue is another
41 important item to address first.

42
43 Board member Nelson suggested that the Board committee and stakeholders come up with
44 recommendations to resolve these issues rather than the Board.

1 Board member Davis felt that leaving the issues to the committee is ‘too loose’, but suggested
2 adding language stating the committee’s role in coming up with recommendations would capture the
3 Board’s intent.

4
5 Board member Swedeen said that she believes the anadromous fish floor was adequately discussed
6 at Policy. She said that giving the floor concept back to Policy to resolve might take several months,
7 which would extend the timeline beyond November 2019. She asked if Policy could simply make a
8 determination that it would take them a long time to sort out the anadromous fish floor concepts and
9 recommend that the Board committee make the decision for a path forward.

10
11 Chair Bernath stated that Policy needs to clearly determine if they can reach consensus and if not,
12 provide a majority/minority report in order to be properly before to the Board.

13
14 Board member Nelson said that he hesitates sending the anadromous fish floor concept back to
15 Policy as a procedural process especially since they may be receiving additional analysis and
16 information relevant to the anadromous fish floor.

17
18 Board member Herrera said he believes the concept for an anadromous fish floor was previously
19 discussed at Policy, but was unsure if formal dispute resolution occurred. He anticipated, with
20 further discussions, that Policy could decide on appropriate floor criteria.

21
22 Board member Swedeen suggested that Policy be tasked to determine if the anadromous fish floor
23 was discussed as a concept and that if they found that no clear consensus was reached, Policy could
24 recommend that the Board committee work on the floor using the tribes’ analysis to resolve this
25 issue.

26
27 Rentz sought clarification regarding how the Board intends Policy to determine if sufficient
28 discussions on the anadromous fish floor occurred. She asked for the Board to provide the threshold
29 for determining the record on Policy’s discussions.

30
31 Board member Herrera said he believes the Board’s February 2018 motion which requested DNR to
32 evaluate the three PHB options did include an anadromous fish floor. If a Policy discussion is
33 necessary for the Board’s consideration, he said that the Board needs to be clear and have Policy fix
34 it. He also asked for the Board to make the lidar model a stronger commitment.

35
36 Board members discussed the options for Policy to combine both decision points—anadromous fish
37 floor and water crossing structures—and make a recommendation at one time or separate the two
38 items and report on the water crossing item once the anadromous fish floor item was completed.
39 Board members agreed that the floor concept was the priority and should be completed first.

40
41 Rentz felt that a discussion on the anadromous fish floor could occur within Policy in time for the
42 Board’s August 2019 meeting, but did not think resolution on road crossing structures could occur
43 by August. She said that Policy would have to adjust priorities to make this happen.

1 **MOTION:** Tom Nelson moved the Forest Practices Board establish a Board committee to
2 facilitate staff and Policy caucuses' discussions in order to make recommendations
3 on outstanding issues associated with the proposed water typing system effort,
4 specifically to:

- 5 ○ Priority one is to understand the spatial analysis and work to resolve whether
6 width can be precisely estimated for the purposes of the required economic
7 and environmental analyses;
- 8 ○ Determine how the rule making should be applied in eastern Washington;
- 9 ○ Determine if and when the PHB validation study should be done and whether
10 it should be combined with the study to determine physicals; and,
- 11 ○ Determine if rule language, Board resolution, or other non-rule options would
12 suitably encourage moving toward a Lidar modelled map-based water typing
13 rule.
- 14 ○ Board committee shall work with stakeholders to resolve any outstanding
15 issues regarding the anadromous floor.
- 16 ● Request the Board committee to report back to the Board on progress at the
17 August 2019 meeting; with recommendations on how to move forward on the
18 water typing system rule at the November 2019 meeting.
- 19
- 20 ● The Board directs TFW Policy to address first the anadromous floor and then
21 road water crossing structures to recommend whether these items should be part
22 of the water typing system rule. TFW Policy will report back to the Board
23 committee as quickly as possible on each item.
- 24
- 25 ● Request the Board chair to ensure that staff continues working toward
26 completing those aspects of the water typing system rulemaking guidance,
27 preliminary CBA/SBEIS and environmental analysis as the Board committee
28 resolves outstanding issues. Board staff will provide an update at the August
29 Board meeting.
- 30

31 **SECONDED:** Carmen Smith

32
33 **Board Discussion:**

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

38
39 **ACTION:** Motion passed unanimously (Janicki not available for vote).

40
41 The Board committee will be chaired by Board member Guenther and include Board members
42 Davis, Herrera, Nelson and Swede.

43
44 Meeting adjourned at 2:10 p.m.