FOREST PRACTICES BOARD
REGULAR BOARD MEETING
August 13, 2013
Natural Resources Building
Olympia, Washington

Members Present
Aaron Everett, Chair, Department of Natural Resources
Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Court Stanley, General Public Member
David Herrera, General Public Member
David Whipple, Designee for Director, Department of Fish and Wildlife
Heather Ballash, Designee for Director, Department of Commerce
Julie Morgan, Designee for Director, Department of Agriculture
Paula Swedeen, General Public Member
Phil Davis, General Public Member (9 a.m. - 2:45 p.m.)
Tom Laurie, Designee for Director, Department of Ecology

Members Absent:
Dave Somers, Snohomish County Commissioner

Staff
Donelle Mahan, Acting Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Patricia Anderson, Rules Coordinator
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS
Aaron Everett called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m. Everett welcomed new member Joe Stohr who replaced David Whipple.

APPROVAL OF MINUTES
MOTION: Phil Davis moved the Forest Practices Board approve the May 14, 2013 meeting minutes as amended.

SECONDED: Bob Guenther

Joe Stohr suggested changes to page 3 lines 17-19 and page 7 lines 19-25 to read as follows:

> Don Nauer, Washington Department of Fish and Wildlife (WDFW), said it was not easy to mesh the more ~~instructive~~ site-specific prescriptive nature of the WDFW hydraulic project rules into the ~~certainties~~ more minimum standard (one-size-fits-all) nature of the forest practices rules, and noted collaboration in FPA pre-application planning is key to success.
>
> David Whipple explained that WDFW's current statutory authority only applies to nest tree protection. He said an FPA slipping through the cracks is not the norm, WDFW does not

think a forest practices rule for nest trees is necessary, and ~~recommended~~ committed WDFW to:

Paula Swedeen suggested a change to page 7 lines 40-41 to read as follows.

Paula Swedeen requested ~~WDFW~~ the Board ~~re~~consider whether rule making is necessary after the results of the November meeting and consider landscape planning approaches, and asked whether there currently is conditioning authority. Engel replied DNR has conditioning authority given specific situations.

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

None.

PUBLIC COMMENT

Mary Scurlock, Conservation Caucus, supports the adoption of the adaptive management program reform rule proposal. She also commented on the "Type F Dispute Resolution" currently in Forests and Fish Policy.

Doug Hooks, Washington Forest Protection Association (WFPA), commented on the compliance monitoring report. He said he appreciated the attention to detail and thought it was well written. He also noted that the report contains just one year of the two year field sampling, therefore it is difficult to conclude anything.

Peter Goldman, Washington Forest Law Center (WFLC), provided additional detail than what was provided in the Forests and Fish Policy's memo on the Type F (fish habitat) issue that may come before the Board. He said the question before the Board will be whether or not to proceed with defining fish habitat in rule.

STAFF REPORTS

Everett asked Tami Miketa, DNR, to provide additional detail on the conservation efforts within the Small Forest Landowner Office, specifically the Family Forest Fish Passage Program (FFFPP) and Forestry Riparian Easement Program (FREP) projects.

Everett said he appreciated the staffs work and working with the partners to get these projects completed. He added that the Board will review the roster of approved projects for FREP and the list of completed projects for the last fiscal year in November.

There was no further discussion on the following staff reports:

- Adaptive Management
- Rule Making Activity & Work Plan
- Upland Wildlife Working Group

COMPLIANCE MONITORING ANNUAL REPORT

Walt Obermeyer, DNR, provided a summary of the 2012 results of the interim report (one year results of a two year reporting period). He provided an overview of the standard sample, riparian rules and road activities, and concluded:

- The first year of standard sample is too small to confirm any trends;

- There is no significant change in 20-acre riparian management zone compliance between 2008 and 2012; and
- The program continues to detect compliance deviations that need to be corrected.

He also noted that 75 percent of the 2013 sample has been completed, well ahead of other years.

Board Discussion:
Everett asked for additional clarification on the measurement errors and the precision of the measurements. Obermeyer stated that the issues rotate around the type of measurements taken from streams and riparian management zone widths. Staff finds that their measurements are more precise and where the ribbon gets placed is where the trees get counted, thus a counting issue. There is no measurement error associated with the inner and outer core but there is a 5 percent measurement error rate in the core area.

Carmen Smith asked what type of landowner had the issue. Seth Barnes responded that it varies but the compliance monitoring staff does not know who the landowner is. That information is passed on to the Operations side of the Division who then work with the landowners to avoid a repeat of the issue.

Smith also asked what the goal is for getting everyone compliant and how are landowners educated so they don't repeat the same errors. Mahan responded that it's about the pattern that is completed on the landscape and education occurs through multiple ways via Timber, Fish, Wildlife meetings, staff training, and Washington Contract Loggers training. Landowners are also notified by the region offices of the issues.

Paula Swedeen asked what the issues are with the non-compliant 20-acre exempt parcels. Obermeyer responded that these types of applications are a small portion of the total applications reviewed and staff reviews all of them. He said, typically, these types are small landowners who do not have experience in harvesting and retain contractors to do the job. The focus is on what is missing from the RMZ, e.g., a measured stream is too small or need a larger RMZ. Staff does not know who is at fault. Swedeen said her inquiry was based on previous public testimony from the small landowner community requesting expanding the use of the 20-acre exemption, and there were significant compliance issues she would rather have staff resolve them before the Board considered expanding the application of the exemption.

Tom Laurie said he had similar concerns and asked when the Board will engage in a discussion on the matter. Mahan said staff did not want to include recommendations at this time because final results will not be available until the report is final in 2014.

TFW CULTURAL RESOURCES ROUNDTABLE ANNUAL REPORT
Jeffrey Thomas, co-chair thanked all the members of the Roundtable for all their contributions. He also provided an overview of 2013 work activities which included amendments to question #7 of the Forest Practices Application (FPA) instructions, the development of historic maps, and an information guidance document.

Karen Terwilleger, co-chair, provided an overview of the survey and results for WAC 222-20-120 and the Cultural Resources Protection and Management Plan (CRPMP). A survey to assess how well the "notice of forest practices that may contain cultural resources to affected Indian tribes" (WAC

222-20-120) and the techniques of CRPMP are working was broadly distributed, and 134 responses were received. The results indicated that the process outlined in WAC 222-20-120 is working well with the option of "meeting took place and plan was agreed to" used most often.

Terwilleger summarized the anticipated 2014 activities which included continued efforts on education and outreach.

In response to Thomas' concern about the lack of coordination between the Roundtable and the Small Forest Landowner Advisory Committee, Everett said he would instruct the Committee to have a joint annual meeting with the Roundtable at least once a year. He added that he appreciated the Roundtable's work on the FPA instructions.

Clean Water Act Assurances Annual Report

Stephen Bernath, Department of Ecology, highlighted the completed milestones. He noted the continued challenges in completing the milestones:

- long term funding for the Adaptive Management Program;
- lack of principal investigators/research scientists to serve as lead in getting study designs completed and moving forward;
- competing priorities; and
- the lack of trust amongst parties of the settlement agreement.

He encouraged the principles of the settlement agreement to discuss legislative strategies for continued funding and all the caucuses within the Adaptive Management Program to work on building relationships to regain trust.

Bernath also recognized the need to find partnerships with organizations to help with research needs in order to fulfill the CMER Master Schedule.

Paula Swedeen asked at what point Clean Water Act assurances are lost if milestones are not being met. Bernath responded that it would be a good conversation to have at a future date. In the meantime making incremental progress is sufficient.

TFW POLICY COMMITTEE'S 2013 ACCOMPLISHMENTS AND 2014 PRIORITIES

Stephen Bernath, co-chair, reviewed the priorities for the remainder of 2013:

- Board Manual Section 22
- Type N Water Strategy
- Type F Waters
- Mass Wasting Effectiveness Monitoring Project
- CMER Work Plan and FY 2014 Budget

Priorities for 2014 include:

- Water Typing – Type N and F
- Mass Wasting Effectiveness Monitoring
- FY 2014 CMER Work Plan and Budget
- Completion of CMER Research

Bernath said there is a current issue in making progress on the 2013 priorities: the Department of Fish and Wildlife (WDFW) will request the Policy Committee to conduct a review of their revised Hydraulic Code Rules. The capacity for the Policy Committee to accept any new work may require delaying existing priorities for the remainder of this year and early next year.

Everett acknowledged the workload conflicts, however he stated the Board needs to provide the Policy Committee with some guidance on how to move forward. He asked Marc Engel, DNR, to provide the pros and cons of conducting the review of the Hydraulic Code Rule revisions now or at later date.

Engel stated that regardless of timing, the Adaptive Management Program will need to review the Hydraulic Code Rules as drafted by WDFW. Changes to the fish protection standards will trigger an update the forest practices rules. Bernath added that his preference would be to provide WDFW with feedback now prior to initiating rule making which would facilitate an easier rule making process when the Board incorporates the new hydraulic code rules into the Forest Practices Rules.

Joe Stohr stated that WDFW is obligated if revising the Hydraulic Code Rules that may impact forest landowners to seek a review from the Adaptive Management Program. He said that WDFW is on target to request the Policy Committee in October to review the draft rule proposal by February 2014 Stohr said that the Legislature did not impose a timeline but did have an expectation that WDFW would move forward in revising the Hydraulic Code Rules.

Swedeen noted that it seemed likely that on the ground improvements of physical resources could be impacted if some priorities were delayed and to not take action could pose a risk to public resources. She said the decision could be made easier if the Board knew whether delaying the review of WDFW rules would have similar known implications for resource protection.

Stohr said he recognized the difficulty in the decision making without seeing the rule proposal. He stated that perhaps WDFW could gather the requested information to present to the Board at the November meeting; however WDFW would still seek to engage the Policy Committee in October.

Everett agreed that the Board would discuss this further at their November meeting and that no action is needed at this time.

He also encouraged the Policy Committee to rededicate to the TFW ground rules, which is essential to making the program work.

PUBLIC COMMENT ON BOARD'S 2013 WORK PLAN ADJUSTMENTS

Pete Heide, (WFPA), encouraged the Forests and Fish Policy Committee to go through the Thurston County Dispute Resolution Center for collaborative negotiations training.

REVIEW OF BOARD'S 2013 WORK PLAN

Marc Engel, DNR, requested the Board approve changes to the 2013 work plan that included changing the completion date for two CMER studies.

MOTION: Bob Guenther moved the Forest Practices Board approve the 2013 Board Work Plan to delay presentation of the Policy Committee's recommendations for the Extensive Riparian Status and Trend Monitoring Type F/Eastside Temperature

Study to the Board at their November 2013 meeting and the Mass Wasting Effectiveness Monitoring Project to the Board at the February 2014 meeting, if necessary.

SECONDED: Tom Laurie

MOTION TO AMEND: Paula Swedeen moved to amend the motion by adding "if necessary" at the end of the motion.

SECONDED: Carmen Smith

ACTION ON AMENDMENT: Motion passed unanimously.

ACTION: Motion passed unanimously.

PUBLIC COMMENT

Chris Mendoza, Conservation Caucus, responded as CMER co-chair to concerns heard earlier in the meeting relating to the Policy Committee. He said the Policy Committee's tasks are much broader than CMER. CMER is more single focused and able to move a project through quickly whereas the Policy Committee has many pathways to a decision in order to reach consensus. He also said the Board-approved pilot to conduct three projects through the LEAN process has had limited success in some areas and more in other areas. He is hopeful that more of the "bugs" can be worked out for more success.

Rob Kavanaugh encouraged the Board to revise procedures relating to petitions for rule making by assigning staff to assist public members in drafting the petition and allowing adequate time for the public member to discuss the issues with the Board. He also expressed dissatisfaction in how the meeting minutes were prepared for the May meeting.

PUBLIC COMMENT ON NORTHERN SPOTTED OWL IMPLEMENTATION TEAM'S RECOMMENDATIONS

Cindy Mitchell, WFPA, provided a historical look back at the regulatory approaches taken related to spotted owl issues and said the new voluntary incentive based approach brings hope and a positive pathway forward.

Graham Taylor, Sierra Club, expressed concern about efforts on private and state lands to make up the difference of protection of owls over time. He encouraged the Board to create the conditions on the ground that can work towards change and recovery of the spotted owl. He also expressed concern about how the spotted owl will adapt to climate change and what mitigation efforts can be created.

Don Halabisky, Sierra Club, said he is concerned that the spotted owl population continues to decline despite the efforts and recommendations of the 2009 Spotted Owl Policy Working Group.

Mark Johnston stated he shares the same concerns of Graham Taylor, that on-the-ground conditions have not been improved for the spotted owl. He would like the Board to take a more aggressive approach in spotted owl protection.

Shawn Cantrell, Seattle Audubon, encouraged the Board to get actively engaged in the spotted owl issues to be ready to take action in November on the recommendations provided by the Northern Spotted Owl Implementation Team.

Kara Whitaker, WFLC, urged the Board to consider stronger conservation measures to prevent further decline of spotted owls.

Dave Wertz, Conservation Northwest, said that the current rules for spotted owl protection are not working. He asked the Board to create a policy that meets the social and biological responsibilities.

Becky Kelly, Washington Environmental Council (WEC), encouraged the Board to develop measures that fully support spotted owl sites and habitat within and outside the SOSEA. She stated that WEC is committed to working together in creating regulatory tools and incentives the work on the ground.

Miguel Perez Gibson, (WEC), summarized the Board's spotted owl activity for the past few years. He also stated that at some point U.S. Fish and Wildlife Service and Washington Department of Fish and Wildlife should question the effectiveness of the existing Forest Practices Rules to avoid "take" of the spotted owl.

NORTHERN SPOTTED OWL IMPLEMENTATION TEAM'S RECOMMENDATIONS

Lauren Burnes, DNR, provided a summary of Board actions since 2008 and reviewed the team's work plan.

Andy Hayes, DNR, reported that the Board's motion in 2012 that directed the team to "investigate and recommend whether the State should consider seeking voluntary "opt-in" federal assurances for forest landowners . . ." has been the primary focus of the team for the past eight months. along with researching voluntary incentives and the Eastside Pilot Project.

He said the agreement on the recommendations has not occurred; however, the team will continue to work towards reaching consensus by November 2013.

Hayes recommended the Board direct the team to complete its work by November 2013.

Everett supports the recommendation to allow the team to continue its work and extend the timeline to present recommendations to November 2013.

Paula Swedeen stated that there has been a lot of creative thinking and genuine interest to develop incentive tools that work. She thinks the consensus agreements among the team members is important and will form the basis for doing good work and moving forward.

MOTION: Aaron Everett moved the Forest Practices Board allow the Northern Spotted Owl Implementation Team until November 2013 to complete developing recommendations as assigned by the Board at the November 2012 meeting. In addition, an interim report be completed by August 23, 2013 and distributed to the Board.

SECONDED: Bob Guenther

ACTION: Motion passed unanimously.

RULE MAKING ON ADAPTIVE MANAGEMENT REFORM

Marc Engel, DNR, requested the Board adopt the Policy Committee's consensus rule proposal that implements the changes outlined in the 2012 settlement agreement for the Forest Practices Habitat Conservation Plan. The amendments include:

- Reestablishing the Policy Committee as a consensus-based body composed of nine caucus principles or their representatives with one vote per caucus.
- Adjusting the dispute resolution process timelines.
- Expanding the CMER work plan process to include a Master Project Schedule.

MOTION: Tom Laurie moved the Forest Practices Board adopt the rule proposal amending WAC 222-12-045 Adaptive Management Program that incorporates the recommendations of the settlement agreement regarding the Forest Practices Habitat Conservation Plan. He further moved the Board direct staff to file a CR-103 Rule Making Order with the Office of the Code Reviser.

SECONDED: Court Stanley

ACTION: Motion passed unanimously.

RULE MAKING ON FOREST PRACTICES HYDRAULIC PROJECTS AND FOREST BIOMASS

Marc Engel, DNR, requested the Board adopt the Forest Practices Hydraulic Project and Forest Biomass rules. The rule proposal incorporates fish protection standards from the Hydraulic Code Rules into the Forest Practices Rules as prescribed by Second Engrossed Substitute Senate Bill 6406 (2102) and include recommendations made by the 2012 Forest Biomass Working Group.

Engel said the rule proposal includes the following recommendations based on public comment and re-analyzing the legislation:

- Include Type N Waters in the definition of "forest practices hydraulic project" so there is common terminology for all projects that use, divert, obstruct, or change the natural flow or bed of forested streams.
- Retain the current definition of bankfull width. Rules brought in from the Hydraulic Code Rules maintain the "ordinary high water line" metric.

He also recommended the effective date of the rules be December 30, 2013.

MOTION: Court Stanley moved the Forest Practices Board adopt the rule proposal as presented today that:

- Pursuant to chapter 1, laws of 2012, incorporates into the Forest Practices Rules the fish protection standards from the Hydraulic Code Rules applicable to forest practices activities; and
- Incorporates recommendations by the Forest Biomass Working Group relating to the harvest of forest biomass.

He further moved that the Board direct staff to file a CR-103 Rule Making Order with the Office of the Code Reviser specifying an effective date of December 30,

2013.

SECONDED: Joe Stohr

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON BOARD MANUAL SECTIONS

Pete Heide, WFPA, supports the approval of Board Manual Section 5, Forest Practices Hydraulic Projects. He thanked all the members of the board manual group for their commitment and efforts to the process and getting the board manual section done.

BOARD MANUAL SECTIONS

Marc Ratcliff, DNR, requested the Board approve Board Manual Section 22 as presented. The amended changes are a result of the Forest Practices Habitat Conservation Plan Settlement Agreement and include the following:

- re-defined the Forests and Fish Policy Committee caucuses, establishing nine principle voting caucuses
- stream lined the dispute resolution process and now allows CMER to utilize stage 2 of the dispute resolution process
- added reporting guidelines and management of the CMER Master Project Schedule

MOTION: Carmen Smith moved the Forest Practices Board approve Board Manual Section 22, Adaptive Management Program. She further moved the Board allow staff to make minor editorial changes if necessary prior to distribution.

SECONDED: Bill Little

ACTION: Motion passed unanimously.

Marc Ratcliff, DNR, also requested the Board approve a new board manual section and four others relating to the incorporation of the fish protection standards into the Forest Practices Rules as directed by 2012 legislation.

The new Board Manual Section 5 includes:

- Concepts from WDFW's 2003 culvert design manual for fish passage projects.
- Using the term 'channel bed width' to define the starting point or design parameter for forest practice hydraulic projects.
- Removing guidance for water crossing structures in Type N waters from Board Manual Section 3 and adding to Section 5 for consistency.

Tom Laurie questioned why the hydraulic design option (in Part 4.5.2.3) was included in the board manual given the uncertainty for fish passage and failure to provide adequate transport of sediment or organic material.

Marc Engel clarified that the legislation directed DNR to incorporate the fish protection standards and the guidance in place when the statue became effective. Since the hydraulic method is included in the 2003 WDFW culvert guidance, the stakeholder group opted to present methods for design in descending order of preference and added language that discourages the use of this method.

David Herrera said that inclusion of the hydraulic design option in the board manual was not supported by the Tribes. He said the federal agencies recognize the best available science to be the stream simulation design method.

Ratcliff briefly mentioned the changes to Board Manual Sections 3, 4, 21 and 26 and also noted an additional correction needed in the Glossary of Section 3. The following will be added to the "Forest Practice hydraulic project" definition:

> "Stand-alone proposals involving channel change and realignment, dredging in fresh water areas, and constructing outfall structures are not forest practices hydraulic projects and remain governed by chapter 77.55 RCW and chapter 220-110 WAC. "

MOTION: Carmen Smith moved the Forest Practices Board approve Board Manual Section 5, Guidelines for Forest Hydraulic Projects along with Section 3, Guidelines for Forest Roads as presented today, Section 4, Guidelines for Clearing Slash and Debris from Type Np and Ns Waters, Section 21, Guidelines to Alternate Plans and Section 26, Guidelines for Large Woody Debris Placement Strategies. She further moved the Board allow staff to make minor editorial changes if necessary prior to distribution.

SECONDED: Bob Guenther

Board Discussion:
Tom Laurie said he supported the motion, but looks forward to amending the manual section and rules as WDFW revises its rules.

ACTION: Motion passed. 10 Support / 1 Oppose (Herrera)

PUBLIC COMMENT ON PETITION FOR RULE MAKING

Rob Kavanaugh, Friends of Western Gray Squirrel, shared some Western gray squirrel (WGS) habitat material. He also requested the Board to list the WGS as a threatened species; include the WGS as a Class IV-special trigger; develop best available science to create a regulatory system; employ a landscape level management approach; and develop procedures and rules to provide compensation for private landowners, counties and trusts who may experience adverse economic impacts from WGS management.

Bill Little asked Kavanaugh how the compensation would work. Kavanaugh responded that he envisioned landowners would be compensated through trust monies and conservation easements.

Paula Swedeen recalled the action the Board approved at the last meeting, and asked Kavanaugh if he was willing to allow time for the report to be presented to the Board. Kavanaugh responded that he would be agreeable if there was a memorandum of agreement between WDFW and DNR to do what the Board thought they were going to do.

PETITION FOR RULE MAKING FROM ROB KAVANAUGH

Marc Engel recapped the motion passed at the last meeting, the process for petitions for rule making, and historical actions and review taken by the Board.

The Board requested the following for the November meeting:

- More information about the species, the history of the Board's regulatory approach, and the effectiveness of the current voluntary protection methods.
- Expanded presentations regarding the status of WGS populations, a review of Forest Practices Applications in areas containing WGS, and successful collaboration between WDFW and forest landowners.

MOTION: Swedeen moved the Forest Practices Board deny the petition for rule making on the Western Gray Squirrel at this time and reemphasize the instructions given to Board staff at the May 14, 2013 meeting to report back to the Board in November including information items requested by the Board. Staff is instructed to reference the broadcast of the August meeting for further content.

SECONDED: Heather Ballash

ACTION: Motion passed unanimously.

EXECUTIVE SESSION

None.

Meeting adjourned at 3:45 p.m.