

**FOREST PRACTICES BOARD**  
**Regular Board Meeting**  
August 10, 2016  
Natural Resources Building, Room 172  
Olympia, Washington

**Members Present**

Stephen Bernath, Chair, Department of Natural Resources  
Bill Little, Timber Products Union Representative  
Bob Guenther, General Public Member/Small Forest Landowner  
Brent Davies, General Public Member  
Carmen Smith, General Public Member/Independent Logging Contractor  
Court Stanley, General Public Member  
Dave Herrera, General Public Member (participated from 9 a.m. – 3 p.m.)  
Heather Ballash, Designee for Director, Department of Commerce  
Joe Stohr, Designee for Director, Department of Fish and Wildlife  
Lisa Janicki, Elected County Official  
Patrick Capper, Designee for Director, Department of Agriculture  
Paula Swedeen, General Public Member  
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**

Stephen Bernath called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m. and immediately convened an executive session.

**EXECUTIVE SESSION**

The Board convened executive session from 9:02 a.m. – 9:45 a.m.

**APPROVAL OF MINUTES**

**MOTION:** Carmen Smith moved the Forest Practices Board approve the May 11, 2016, meeting minutes.

**SECONDED:** Lisa Janicki

**ACTION:** Motion passed. 10 support/3 abstentions (Paula Swedeen, Bill Little, Dave Herrera).

## **REPORT FROM CHAIR**

Bernath reported on the following:

- Cultural resources facilitation efforts – DNR has invited tribes, forest landowners and state agencies to participate in a meeting to improve communication and education concerning cultural resources; improve existing cultural resource processes; and to seek a mutually agreeable outcome.
- Marbled Murrelet critical habitat - USFWS affirmed the current critical habitat designations. Board action is not necessary at this time.
- Compliance monitoring report - report will be presented to the Board after the independent science review is completed, most likely at the February 2017 meeting.

## **PUBLIC COMMENT (AM)**

John Pincelli, on behalf of east Sequim and Gardiner communities, shared his concerns about a timber sale damaging marbled murrelet habitat and potential spotted owl habitat. He said he has documentation showing the damage and requested assistance in stopping the company from doing further damage.

Ken Miller, Washington Farm Forestry Association (WFPA), invited the Board to conduct a field trip on his tree farm to get a visual representation of what the small landowner template proposal looks like. He also stated that he would like to see more requests of the Small Forest Landowner Advisory Council from the Board and DNR for advice on matters that affect small landowners. He said it has been years since DNR asked for advice from the Council.

## **CLEAN WATER ACT ASSURANCES**

Bernath said the initial Clean Water Act Assurances review occurred in 2009; however, Department of Ecology (Ecology) determined that there was not enough information from the adaptive management process to determine whether the current prescriptions were working or not. He said Mark Hicks' report provided at the last Board meeting identified items that needed to be worked on and that DNR staff would work with Ecology to identify how to address those concerns.

Mark Hicks, Department of Ecology, provided an update on the current status and commitments made over the past three months. He said DNR will:

- Strengthen the cooperative approach for engaging the Compliance Monitoring Stakeholder Advisory Committee;
- Ensure the 2014 Alternate Plan guidance is being used effectively;
- Ensure the regional water type review team process is still being used effectively;
- Expand the small forest landowner roads survey statewide;

and

The Adaptive Management Program Administrator will:

- Review the existing process to flag projects that are having trouble with design or implementation and revise accordingly; and
- Begin a process to re-examine the existing Lean process to determine if further modifications are needed.

He said since the last Board meeting, the Timber, Fish and Wildlife (TFW) Policy Committee (TFW Policy) has completed one milestone and Cooperative Monitoring, Evaluation, and Research Committee (CMER) has no research milestones completed.

Hicks concluded by sharing suggestions to further improve the Adaptive Management Program process:

1. Get more help from outside experts
2. Further the Lean process
3. Keep policy and science decisions separate

### **2017-2019 CMER MASTER PROJECT SCHEDULE AND PROPOSED BUDGET AND LEGISLATIVE REPORT**

Hans Berge, DNR, presented the proposed 2017-2019 budget. He highlighted the four major categories: additional administrative/support staff, projects near completion, projects in field implementation stages, and projects in study design and conceptual stages.

He said the program seeks to spend \$8 million during the 2017-2019 biennium and that there is no need to request additional funding from the legislature. He said the budget will be updated continuously to better track current spending and future projections and will be presented to the Board for approval at the May 2017 meeting.

Berge also reviewed the outline and purpose of the legislative report due October 1st. He said the report is required per 2ESHB 2376 to inform the legislature on expenditure details, accomplishments, the use of science in decision making for the 2015-2017 biennium, and describe funding needs for the 2017-2019 biennium.

### **PUBLIC COMMENT ON 2017-2019 CMER MASTER PROJECT SCHEDULE AND PROPOSED BUDGET AND LEGISLATIVE REPORT**

Doug Hooks, Washington Forest Protection Associated (WFPA), said he supports the budget proposal and urged the Board to approve it as is.

### **2017-2019 CMER MASTER PROJECT SCHEDULE AND PROPOSED BUDGET AND LEGISLATIVE REPORT**

Hans Berge, DNR, requested the Board's approval of the CMER Master Project Schedule and the outline of the legislative report.

**MOTION:** Court Stanley moved the Forest Practices Board approve the 2017-2019 CMER Master Project Schedule and estimated budget as presented.

**SECONDED:** Tom Laurie

**ACTION:** Motion passed unanimously.

**MOTION:** Tom Laurie moved the Forest Practices Board approve the outline presented today for the preparation of the report for the Legislature on the Fiscal Year 2015-2017 funding and project funding needs out to 2030 for the implementation of the

Cooperative Monitoring, Evaluation and Research and the Adaptive Management Program expenditures as required by Second Engrossed Substitute House Bill 2376. He further moved the Board direct staff to complete the report and submit it to the appropriate legislative committees by October 1, 2016 on behalf of the Board.

**SECONDED:** Bob Guenther

Board Discussion:

Lisa Janicki suggested adding a list of unfunded projects to the report. Berge agreed and will include an “item D” listing unfunded projects on the outline.

**ACTION:** Motion passed unanimously.

### **TFW POLICY COMMITTEE’S RECOMMENDATIONS AND TIMELINES ON THE UNSTABLE SLOPES PROPOSAL INITIATION**

Hans Berge, DNR, presented TFW Policy’s recommendations that include proposed science tracks to conduct literature reviews to:

- Answer questions related to the mechanics of non-glacial deep-seated landslide failures and reactivation.
- Evaluate assessments for all deep-seated landslides in Board Manual 16, Part 6.2.
- Scope the potential for empirically-based runout screening tools for shallow rapid landform identification and analysis.

### **PUBLIC COMMENT ON TFW POLICY’S RECOMMENDATIONS**

Kara Whitaker, Washington Forest Law Center (WFLC), said she supports TFW Policy’s initial set of recommendations for the Unstable Slopes Proposal Initiation. She urged the Board to approve the recommendations and timelines and said she awaits TFW Policy’s response to the remaining tasks.

Karen Terwilleger, WFPA, said she supports the recommendations and urged the Board to approve it.

### **TFW POLICY COMMITTEE’S RECOMMENDATIONS AND TIMELINES ON THE UNSTABLE SLOPES PROPOSAL INITIATION**

Hans Berge, DNR, requested the Board’s approval of the recommendations and timelines for the Unstable Slopes Proposal Initiation.

**MOTION:** Heather Ballash moved the Forest Practices Board approve the TFW Policy Committee’s recommendations to conduct a phased Adaptive Management Program review of all components of the Board approved Unstable Slopes Proposal Initiation. The first phase is initiation of an Adaptive Management Program review of:

- potential instability and failure mechanisms of deep seated landslides, to be completed and delivered to the TFW Policy Committee within 8 months;

- reactivation potentials of relict and dormant deep seated landslides, and terminology for each, to be delivered to the TFW Policy Committee in October, 2016; and,
  - determine if an empirically-based runout tool can developed for shallow rapid landslides, to be delivered to the TFW Policy Committee by December, 2016.
- She further moved the TFW Policy Committee provide updates to the Board on the progress of the completion of each component and the initiation of adaptive management program review of the remaining components identified to complete the review of all elements of the Board’s Unstable Slopes Proposal Initiation.

**SECONDED:** Carmen Smith

Board Discussion:

Carmen Smith said she appreciates the timeline provided in the recommendations.

Paula Swedeen also appreciates the timelines as well as having progress reports.

**ACTION:** Motion passed unanimously

**NORTHERN SPOTTED OWL (NSO) CONSERVATION ADVISORY GROUP**

Marc Engel, DNR, said the purpose of the group is to evaluate the need, based on available habitat, to maintain NSO site centers while the Board completes its evaluation of rules affecting the owl. He said WAC 222-16-010 requires an annual update to the Board on evaluations by the group in order to determine whether this group’s function continues to be needed for spotted owl conservation. He reported that there were no surveys submitted to Department of Fish and Wildlife for review, thus the group did not meet.

He concluded that staff recommends the Board continue the group to ensure conservation measures for the spotted owl are maintained.

Engel also noted that the membership of the group is identified in rule and requires the Board to approve the members. He requested the Board appoint Stephen Bernath to replace Aaron Everett.

**PUBLIC COMMENT ON SPOTTED OWL CONSERVATION ADVISORY GROUP**

None.

**NORTHERN SPOTTED OWL CONSERVATION ADVISORY GROUP**

Marc Engel, DNR, requested the Board support the recommendation to continue the group and appoint Stephen Bernath to serve on the advisory group.

**MOTION:** Paula Swedeen moved the Forest Practices Board support the need for the NSO Conservation Advisory Group. She further moved the Forest Practices Board approve Stephen Bernath to serve on the Spotted Owl Conservation Advisory Group, replacing Aaron Everett.

**SECONDED:** Lisa Janicki

**ACTION:** Motion passed unanimously.

**PUBLIC COMMENT (PM)**

Wyatt Golding, WFLC, on behalf of Skykomish Valley Environmental Economic Alliance, Defenders of Wildlife, and NW Center for Alternatives to Pesticides, said he will refile a petition for rule making for the Board's November meeting. He said this is due to the lack of agreement on their issues of concern within the Pesticide Working Group as well as the wide disparity between different landowners and applicators in the steps they take for notification.

Megan Dunn, Northwest Center for Alternatives to Pesticides, said that compared to other states and based on best practices recommended by the Environmental Protection Agency and state departments for agricultural use, Washington lacks appropriate monitoring, enforcement, notification and pesticide use reporting. She also indicated the stakeholders disagree on whether or not there is risk to local landowners as a result of chemical spraying. She said they will continue the conversation on how to improve transparency and better protect workers, residents, and Washington's forests.

Inessa Pearce, Skykomish Valley Environmental and Economic Alliance, requested the Board to increase transparency by providing advance notification to residential communities within a vicinity of aerial spraying to allow the public to make their own decisions about how to assess the risk of chemical exposure.

Alex Sidles, WFLC, shared their concerns on the Clean Water Act Assurances falling behind schedule. He asked the Board to direct DNR to make Clean Water Act Assurances a top priority and set an aggressive timeline along with reporting requirements and a majority/minority report if consensus cannot be reached.

Heather Hansen, Washington Friends of Farms and Forests, said the existing notification process used through the Forest Practices Application and the required physical posting provides more information to the public than in any other state. She indicated that the system may need some enhancements to make it more user friendly and easier to access.

John Sirios, Upper Columbia United Tribes (UCUT), provided his perspective on what is going on within the TFW Cultural Resources Roundtable. He said the tribes are going through a tough time in trying to figure out how to reengage and reflect on the current process. He said many tribes have concerns, and they do not know whether it is worth their time to stay involved in the process. He said the hiring of Tim Thompson as facilitator along with DNR staff meeting with tribal staff to receive feedback from the tribes is a bright spot at this point.

Marc Gauthier, UCUT, said he was encouraged with the information received from the Forest Pesticide Working Group and that the new application system could provide the notification they were seeking in their petition for rule making that was withdrawn prior to the Board's August meeting. He said they are willing to continue the discussions to work collaboratively to develop solutions rather than submit a petition for rule making.

Jeffery Thomas, Puyallup Tribe, said he is concerned with the uncertainty of the Tim Thompson process, specifically what are the expected outcomes for this process, and how will the concerns of the tribes be addressed. He also underscored that the purpose of the TFW Cultural Resources Roundtable is to help the tribes in fulfilling their role in all phases of regulating forest practices as set forth in the Forests and Fish Report.

### **TFW POLICY COMMITTEE'S TYPE F MATRIX UPDATE**

Bernath acknowledged TFW Policy's quarterly updates on the Type F process, mentioned several of the goals associated with a permanent rule and reminded the Board that TFW Policy was tasked with bringing recommendations to the Board by November.

Adrian Miller, Ray Entz, co-chairs, and Hans Berge, DNR provided a progress update on the matrix as well as a progress report on the individual elements of the matrix.

Miller said the matrix was first developed to bring all the water typing elements together and to track progress in the early stages. At this point, he said it has served its purpose as they transition to developing a document with recommendations for the Board's November meeting.

Their report included the following:

- Off-Channel Habitat – A technical review is complete and TFW Policy is developing recommendations.
- Electrofishing – TFW Policy requested additional work on the protocol survey methodology and identification of when it is appropriate to use electrofishing.
- Physicals – TFW Policy will implement portions of the Adaptive Management Program Administrator's recommendations on WFPA's Type F Physical Proposal Initiation.

Jeff Connick, University of Washington, provided a presentation on "*Evaluating the Potential of Lidar to Improve the Stream Typing Model*". The presentation included:

- Background for re-running the model;
- Geography and data used for the pilot sub-basins;
- Methodology taken to re-run the model;
- Challenges with varying degrees of high-resolution LiDAR;
- Conclusions; and the following recommendations:
  - Determine if an altered methodology is more appropriate for higher-resolution digital elevation model (DEM).
  - Produce modified hydrologically correct DEMs by creating digital culverts to more realistically model stream flows.
  - Expand pilot to include additional watersheds, and if needed, collect additional field verified end-of-fish data with protocol surveys to support more robust model validation.
  - Leverage existing investment in coded process to rapidly investigate additional resolutions and alternative flow accumulation models.
  - Consider a pilot to reformulate the models using high-resolution DEMs natively.

Board Discussion:

Bernath committed Forest Practices operational staff to update the DNR hydro-layer to clearly show the full extent of Type F waters. He said this will result in fewer protocol surveys including

electrofishing. He also said staff will assess whether the hydro-layer needs a technical update to meet water typing objectives.

Miller said TFW Policy will present a full package, striving to reach consensus on each element of the matrix rather than piecemeal each element.

Entz said it is unlikely to have consensus on a full package, but they will bring solution-based options to consider in places where consensus was not reached for the Board to make a decision.

Swedeen said she appreciates consensus recommendations and including options if consensus is not reached. She asked if there are procedural blockages to make a decision if 100 percent consensus is not reached.

Bernath shared that as long as dispute resolution is not raised and TFW Policy brings a package with options to consider where consensus was not reached, the Board can move forward.

Miller said that in November they will describe the points of tentative agreement and those items not in agreement and attempt to explain why such items did not reach consensus. At that point it will be up to the Board to decide how to move forward.

#### **PUBLIC COMMENT**

Peter Goldman, WFLC, urged the Board to direct TFW Policy to present the Board with majority/minority recommendations when issues are controversial. He said by inviting differing recommendations is not a sign of failure, rather it recognizes the interest in maintaining the current rules with other interests for strengthening the rules to protect species dependent on healthy forests and watersheds. He said the taxpayers expect accountability and the burden needs to fall on the Board to keep rule improvements moving forward.

Mary Scurlock, WFLC, shared their unresolved issues related to electrofishing. She spoke of eight issues they would like further clarity on and an emphasis on the technical rationale for providing guidance and reducing the use of e-fishing.

Elaine Oneil, Washington Farm Forestry Association (WFFA), spoke in support of the water typing proposal initiation submitted by WFFA. She also said she is concerned that the science track has not been initiated for the alternate plan template. She said they are looking for a fair assessment of opportunities to develop alternate plan templates that may well exceed the benefits of rule when viewed in the larger context of ensuring that small forest landowners can continue to manage their forests for both the private and public benefits they provide.

Karen Terwilleger, WFFA, said it is important to the landowners to have a comprehensive package that entails all the elements for water typing rather than a piecemeal project. She also provided an historical perspective on how current physicals and electrofishing became rule.



## **TFW POLICY COMMITTEE'S TYPE F MATRIX UPDATE**

Marc Engel, DNR, provided an overview of a draft motion capturing elements of the Matrix that has been completed and provide dates for work in the near future.

Court Stanley said members of TFW Policy may feel this draft motion would hamstring them. He suggested postponing this type of action until November.

Paula Swedeen also agreed that the draft motion would constrain the members of TFW Policy and the negotiations in play.

Stanley and Swedeen expect a complete package that includes recommendations on all the elements contained in the matrix.

Joe Stohr said he supports a setting where progress can be made and expects recommendations in November that would include options. He said process wise, to have a motion with so much detail at the last minute is not appreciated.

Bob Guenther said he supports postponing this type of action until November.

## **FOREST PESTICIDE UPDATE**

Bernath stated the Forest Pesticide workgroup was tasked to look at non-regulatory opportunities to make pesticide applications more transparent and understandable by the public.

Donelle Mahan, DNR, provided a progress report on the work group. She shared where potential agreement was reached and where concerns still exist within each topic area:

- Notification - Agreement that advance notification is important, but no agreement on how to accomplish advance notification.
- Forest Practices Application for aerial chemicals - Agreement on clarifying portions of the aerial chemical information in the FPA.
- Aerial Chemical Reporting - Agreement is currently lacking on reporting methods. On-going discussions are needed to better understand potential and limitations.
- Field compliance - Agreement that an increased effort on field compliance will be helpful.
- Aerial chemical information - Agreement on ways to improve availability of information and guidance.

She summarized that the group will continue discussions with the objective of gaining additional points of agreement.

## **STAFF AND ANNUAL REPORTS**

### Northern Spotted Owl Implementation Team and Safe Harbor Agreement Update

Lauren Burnes, DNR, provided a brief update on the Safe Harbor Agreement process. She said they are on track to deliver a safe harbor agreement to the US Fish and Wildlife Service by the end of the year.

There were no questions for the following reports:

- Adaptive Management Update
- Board Manual Development Update
- Compliance Monitoring Update
- Rule Making Activity Update
- Small Forest Landowner Advisory Committee and Small Forest Landowner Office Update
- TFW Cultural Resources Roundtable Annual Report
- Upland Wildlife Update

### **2016 WORK PLANNING**

The Board did not have any additional changes to the work plan.

Meeting adjourned at 4:35 p.m.