WASHINGTON STATE DEPARTMENT OF
Natural Resources

PETER GOLDMARK
Washington State Commissioner of Public Lands

MEMORANDUM

TO: Forest Practices Board

FROM: Jim Hotvedt, Adaptive Management Program Administrator

DATE: January 28, 2014

SUBJECT: Additional Conservation Caucus material for Type F/N break agenda item

In your February 2014 board packet is a memo from me regarding the Type F/N break dispute resolution process in the TFW Policy Committee. Along with that memo, I forwarded to you recommendations from policy committee caucuses on how to resolve the dispute.

The Conservation Caucus requested that the attached letter and supporting material also be sent to you regarding the Type F/N break "dispute" and associated recommendations for resolution.

Attachments (4):

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FORESTS AND FISH CONSERVATION CAUCUS

c/o Washington Forest Law Center
(Coordinating Organization)
615 Second Avenue, Ste 360
Seattle, WA 98104

Tel: (206) 223-4088
Fax: (206) 223-4280

January 16, 2014

Aaron Everett and Mark Engel, Washington Dept. of Natural Resources
Stephen Bernath and Tom Laurie, Washington Dept. of Ecology
Mark Doumit and Karen Terwilleger, Washington Forest Protection Association
Terry Jackson, Washington Dept. of Fish and Wildlife
Dick Miller, Washington Farm Forestry Association
Kendra Smith, Skagit County

Re: The Five Caucus' Recommendation to the Forest Practices Board Relative to the "Type F" Issue

Dear Five Caucus Colleagues:

In a Memorandum dated December 23, 2013 (Attachment 1), your Caucuses request the Forest Practices Board (Board) to remand the "Type F" issue back to Policy at the Board's February 11, 2014 meeting for further Policy deliberation on the development of a permanent water typing rule. As you know, after proceeding through two stages of Dispute Resolution (including mediation), the Policy Committee could not reach consensus on either a permanent water typing rule or the steps necessary to make this decision.

In our view, the proposed path you seek—an immediate Board remand to Policy—is inconsistent with the new Adaptive Management protocols set forth in the Settlement Agreement dated May 24, 2012 (SA, Attachment 2). While the Board can request Policy to deliberate further before the Board takes action at a subsequent Board meeting, the Type F issue **cannot simply be remanded to Policy** for further development of a proposal over the ensuing five months. There is nothing in your request of the Board that would provide additional substantive guidance to Policy and therefore, asking the Board to default to a remand fails to recognize the fact that there is substantive disagreement among Policy members over how to resolve the Type F dispute. How is the state/landowner proposal, a delay of 5 months, going to remedy the unresolved disputes without Board guidance?

Since approximately summer of 2011, the Policy Committee and a technical sub-committee of Policy has been grappling with whether Policy should recommend to the Board that it adopt a permanent water typing rule and, if so, what the permanent rule and/or associated Board Manual guidance should entail. In January 2013, after Policy could not agree, the Conservation Caucus

invoked Stage 1 of Dispute Resolution (DR) and, because consensus again could not be reached, the CC invoked Stage 2 DR in July 2013. Stage 2 DR ended on December 5, 2013 and, despite mediation by an attorney-mediator, Policy still could not reach consensus on the parameters of a permanent water-typing rule.

Subsequently, consistent with the new Adaptive Management rules (WAC 222-12-045, Section 22) resulting from the SA, the TFW Policy Caucuses prepared split "recommendations" to the Board. Four recommendations emerged from this process: one by the Conservation Caucus, one by a five-Caucus group consisting of DNR, WDFW, Ecology, Industrial and Small forest landowners, and the Counties, and one each from the Westside and Eastside Tribes, respectively.

The five caucus recommendation asks the Board to take several next steps. First, they recommend that the Board give Policy "the time to perform a thorough analysis of options and to prepare and present thoughtful science based recommendations to the Board." Second, they state that, "The Policy Committee must present recommendations to the Board containing clear options with associated implications to consider before changing the rules or guidance." Third, they recommend that the Board "direct Policy to design a water typing system that meets Forests and Fish goals while minimizing and balancing error (shared risk). Accordingly, the five Caucuses "respectfully request the Board direct the Policy Committee to continue their work on development of the Charter" with a May 2014 deadline. In short, the five caucuses recommend that the Board take no substantive action on the Type F issue and clearly imply that the Board cannot take such action without a consensus recommendation from Policy.

We strongly object to this frame of the Board's role because this five caucus recommendation is **inconsistent** with the SA's dispute resolution framework and constitutes a significant "process foul." Page 12 of the attached SA specifies that, absent a consensus agreement to extend, the maximum limit of time during which an issue can be at Policy is five (5) months, which time has lapsed. Moreover, Page 12 of the SA provides, "In the event the Policy committee cannot reach consensus following stage 2 dispute resolution on an issue and the issue advances to the Forest Practices Board, the AMPA shall **deliver** the respective majority and minority recommendations to the Forest Practices Board without a separate formal recommendation. The Forest Practices Board shall reserve its right to ask questions of the AMPA relating to these matters." Because Policy has devoted five (5) months of time to this issue in Stage 1 and 2 dispute resolution, **the Type F matter is now formally before the Board and the majority and minority recommendations are also before the Board.** Thus, any request by the five Caucuses to remand the matter to Policy for work on a future "recommendations" or charter document contravenes the intent of the SA to compel Board action on unresolved Policy matters.

Our perspective is also consistent with the letter of the recently revised administrative rules which clearly describe the Board's role at this juncture: "If stage two dispute resolution within the policy committee does not result in consensus, the program administrator will report the majority and minority recommendations to the board. **The board will make the final determination regarding dispute resolution."** WAC 222-12-045(2)(h)(ii)(D) (emphasis added) (Attachment 3, p. 5).

We want to be clear that we are **not** saying that the Board cannot request Policy to consider the Type F issue further. Indeed, in our recommendations, the Conservation Caucus requests the Board to provide specific guidance to Policy critical to resolving the Type F issues so that Policy will have the benefit of the Board's guidance before dedicating additional time /work on unresolved issues that have already been fully vetted through the DR process. But the five Caucus letter does not simply request the Board to provide guidance to Policy and for Policy to reconsider its stalemate in light of this guidance until the next Board meeting; on the contrary, the five Caucus letter asks the Board **to take no action** until Policy produces a consensus recommendation on the Type F issue and state or implies that the Board may not and should not take any action on the matter until Policy vets the issue or charter further. This option is not permissible under the SA and new adaptive management protocols.

We respectfully request that you modify or clarify your five Caucus request to ensure the Board is not confused about its role as the final arbiter of unresolved Policy disputes. Your clarification must make clear that the Type F issue is now before the Forest Practices Board and that remand to Policy for additional consideration is not an option unless and until the Board renders a decision on the Type F policy recommendations properly before it.

Very truly yours,

Mary Scurlock
Conservation Caucus Policy Representative

Chris Mendoza
Conservation Caucus Science Representative

Peter Goldman,
Conservation Caucus Legal Counsel

cc: Adrian Miller
Aaron Everett
Jim Hotvedt
Chris Hanlon-Meyer
Marc Ratcliff
Mark Hicks
Claire Turpel
Marty Acker
David Powers
Jim Peters
Marc Gauthier
Joseph Pavel
Nancy Sturhan
Kevin Godbout

TO: Washington State Forest Practices Board

FROM: Ecology/Department of Fish & Wildlife Caucus
Department of Natural Resources Caucus
Industrial Landowners Caucus
Small Forest Landowners Caucus
Counties Caucus

SUBJECT: Joint Recommendation of Resolution of the Type F Charter

DATE: December 23, 2013

Background:

The Board asked Policy to prepare recommendations for implementation of the water typing system with an emphasis on completion of Type N water recommendations followed by recommendations for Type F waters. Policy formed subcommittees for both of these issue areas. The Type F subcommittee worked through calendar year 2012 focusing on implementation issues and largely avoiding substantive Policy concerns. In January 2013, the Conservation Caucus invoked stage 1 of dispute. In an attempt to expedite the Charter development timeline, Policy agreed to resolve the dispute by broadening the type F discussion and putting specific action items into a Charter. The process of developing a Charter flushed out some specific areas of concern to many different caucuses that are broadly captured as: off-channel habitat; current practice of identifying the F/N break (electrofishing, protocol surveys, and physical default criteria), use of a model to produce fish habitat water type maps, and rule and guidance implementation.

Despite progress in outlining the details of these issues in a Charter, there remained some overarching concerns with respect to two fundamental concepts related to shared risk and fish habitat. Some caucuses strongly believed that until there was a common understanding of these fundamental concepts, further progress on the tasks identified in the charter would be difficult. In July 2013, the Conservation Caucus exercised their right to invoke stage two of dispute resolution, and Policy agreed to focus on resolving these fundamental concepts in a mediated process. Mediation, while helpful in creating some specific examples about how these concepts could be addressed within the context of some of the issue areas identified in the charter, did not fully satisfy all caucuses. At the end of mediation, Policy could not agree on how to move forward in the dispute resolution process. As a result, the issue of Type F water typing, as a whole, is before the Forest Practice Board.

Policy has made slow, but steady progress on developing a common understanding of shared risk and the definition of habitat and on creating a draft Charter with objectives and tasks related to the identified Type F topics. These are highly complex issues; many of which will require substantive policy discussion including requests for technical input, and potentially additional data and/or science. Resolution of the issues will affect ecological and economic resources. For the adaptive management process to work effectively, Policy must be given the time to perform a thorough analysis of options and to prepare and present thoughtful science based recommended solutions to the Board.

<u>Recommendation</u>:
The five caucus majority believes the Policy Committee must present recommendations to the Board containing clear options with associated implications to consider before changing rules or guidance. We believe the board should direct Policy to design a water typing system that meets Forests and Fish goals while minimizing and balancing error (shared risk). Policy should be tasked with completing the Charter to collaboratively resolve these long-standing issues. The Charter should outline specific objectives, tasks, timelines and identification of appropriate Policy or Technical sub-groups. The Policy Committee must address the following topic areas, accompanying questions are not exclusive but are provided to indicate the kinds of issues being considered under each topical area.

- Off-Channel Habitat
    - How do landowners and DNR currently identify and protect off-channel habitat based on current rules?
    - Are there gaps in the current identification and protection of off-channel habitat used by fish for essential life functions?
    - If so, how can off-channel habitat used by fish for essential life functions be clearly defined so that rules can be repeatable, implementable, and enforceable?
- Electrofishing, protocol surveys, and physical default criteria
    - In the absence of a model, how does the current system balance the errors and associated risks in establishing the Type F/N water typing break?
    - How accurate is the current system in delineating the F/N break?
    - If there is a need to more accurately delineate the F/N break, how can the current system be modified to more appropriately address fish habitat and shared risk?
- Use of a Model to produce fish habitat water type maps
    - Would an updated model (e.g. using LiDAR or other recent information) provide improved model performance acceptable for use (minimal and balanced error) in establishing a regulatory water type map that could be used in forest practices?
    - Could the current run of the model be used in areas where it works well?
- Rule & Guidance Implementation
    - Are rule changes necessary? If so, what are the ecological and economic impacts of the options?
    - Can additional rule and/or guidance make the system more effective?

The completed Charter should be presented to the Board at the May 2014 meeting.

In closing, **the five caucus majority respectfully request the Board direct the Policy Committee to continue their work on development of the Charter.** Policy should also be accountable for reporting progress on Charter implementation on a quarterly basis, after the May 2014 Board meeting.

Settlement Agreement
Conservation Caucus, State of Washington, and Washington Forest Protection Association

I. Recitals

1.1 By letter dated December 21, 2011, the Conservation Caucus (CC)[1] notified the State of Washington (the Governor, the Commissioner of Public Lands, and the Director of the Department of Ecology) (collectively the State), the Regional Administrator for NOAA Fisheries, the Manager of the local U.S. Fish and Wildlife Service (USFWS) (collectively the Services), and the Region 10 Administrator of the U.S. Environmental Protection Agency (EPA) that the CC maintains several legal concerns with the Forest Practices Habitat Conservation Plan (FPHCP), and the associated Incidental Take Permits (ITPs), Implementing Agreement, and Biological Opinions (collectively the FPHCP). The CC also identified concerns with the Clean Water Act assurances provided to the state forest practices program. The CC's December 21, 2011, letter notified the State and Services that the CC would take legal action challenging these federal approvals before the expiration of the statute of limitations if improvements were not made. The statute of limitations will lapse on May 26, 2012, for the USFWS ITP and June 5, 2012, for the NOAA Fisheries ITP.

1.2 The State denies the CC's allegations, but views the CC's December 21, 2011, letter as an opportunity to improve the FPHCP's adaptive management processes and provide clarity to the funding provisions of the Implementing Agreement.

1.3 The Washington Forest Protection Association (WFPA) is an association of Washington forest landowners whose members have a strong interest in and commitment to the success of the FPHCP. WFPA denies the allegations in the CC's December 21, 2012 letter. WFPA also believes an opportunity exits to improve the FPHCP's adaptive management processes and provide clarity to the funding provisions of the FPHCP Implementing Agreement to obtain long-term regulatory certainty for the timber industry.

1.4 The CC, WFPA, and the State recognize that the CC's threatened legal challenge raises a risk that a failure of assurances under RCW 77.85.190 may occur. The CC, WFPA, and the State all agree that they want to avoid such a failure, and that preservation of the FPHCP is important to them.

1.5 The CC, WFPA, and the State recognize a successful resolution is more likely with the active participation and support of Washington's federally recognized Indian Tribes (Tribes) as well as the forest stakeholders. The State has a strong commitment to and interest in a respectful government-to-government relationship with the Tribes and will collaborate with interested Tribes in a manner consistent with this commitment.

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[1] The CC consists of the Washington Environmental Council, Conservation Northwest, Wild Fish Conservancy, Sierra Club, Olympic Forest Coalition, and the Pacific Rivers Council, and is represented by the Washington Forest Law Center.

1.6 The CC, WFPA, and the State (collectively the Parties) have agreed upon a set of recommended improvements to the existing Implementing Agreement and adaptive management process. These improvements are set forth in this Agreement.

1.7 The State agrees to propose to the Services the clarification of the Implementing Agreement that was developed by the Parties as set forth in Section III of this Agreement immediately upon the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and commitments contained herein, the Parties enter into this Agreement as follows.

II. Conservation Caucus Commitments.

2.1 In consideration of the State and WFPA's commitments contained in this agreement, the CC covenants it will not file any action in any manner, or support any party participating in such challenge, challenging the Services' 2006 decisions granting the State's Incidental Take Permits for the FPHCP. This waiver includes claims that the Services Biological Opinions were not sufficient to support the ITP issuance decisions.

2.2 The CC will not for 3.5 years from the date of execution of this Agreement file any action under the Clean Water Act against the Department of Ecology or EPA or support any party participating in such challenge alleging that the Washington State forest practices rules do not meet federal Clean Water Act requirements or state water quality standards. For an additional six (6) months after this 3.5 year period lapses, the CC will not file any CWA action under this section if the CC believes that progress has been made by the adaptive management program relating to the Clean Water Act studies and their implementation.

2.3 The CC will not for 3.5 years from the date of execution of this Agreement file any action against the Services seeking re-initiation of consultation under Section 7 of the implementation of Endangered Species Act (ESA) regarding the FPHCP or any other citizen suit under the ESA regarding the FPHCP or support any party participating in such challenge. If the clarifications to the FPHCP Implementing Agreement in section III are adopted, this commitment does not apply to any action related to those clarifications initiated after the process identified in Implementing Agreement Section 7.1 is completed. For an additional six (6) months after this 3.5 year period lapses, the CC will not file any ESA action under this section if the CC believes that progress has been made by the adaptive management program relating to studies and their implementation.

2.4 If the adaptive management proposals identified in Attachments 2 and 3 do not result in a change consistent with the commitments in Section IV approved by Forest and Fish Policy and the Forest Practices Board by December 31, 2013, then the CC commitments in paragraphs 2.2 and 2.3 above are withdrawn.

2.5 In the event the CC files an action as described in sections 2.2 or 2. 3 of this Agreement, then WFPA may decline to jointly advocate under sections 4.10 and 4.11 of this Agreement, or discuss its legislative goals and objectives under section 4.13 of this Agreement.

III. Clarifications to FPHCP Implementing Agreement

3.1 The State agrees to request from the Services the clarifications to the FPHCP Implementing Agreement set out in Attachment 1 using the process for a minor modification outlined in the Implementing Agreement paragraph 11.1 once this Agreement is signed.

3.2 The State agrees to request that if the Services approve these clarifications to the Implementing Agreement, the changes become effective May 25, 2012.

3.3 If the CC does not receive a confirmation from the Services that the Services will approve the proposed Implementing Agreement minor modification by May 30, 2012, this Agreement shall become null and void.

IV. Joint Adaptive Management Proposals.

4.1 The Parties have collaboratively agreed to numerous process related improvements to the FPHCP's adaptive management program. It will, however, take time for Forest and Fish Policy to consider and recommend improvements to the Forest Practices Board for review and approval.

4.2 Attachment 2 identifies the Adaptive Management Proposal for Improvements to the Program's Process for Making Decisions. This Attachment 2 is incorporated into this Agreement by reference.

4.3 Attachment 3 identifies the Adaptive Management Proposal for a Master Schedule of Cooperative Monitoring, Evaluation & Research Committee (CMER) work. This Schedule is based, in large part, on CMER's current work plan, as approved by Policy and the Forest Practices Board. This schedule will change over time as projects are completed and/or re-prioritized. This Attachment 3 is incorporated into this Agreement by reference.

4.4 The State, CC, and WFPA agree to initiate the joint adaptive management proposals in Attachment 2 and 3 with the Forest and Fish Policy Committee as soon as possible, but no later than the August, 2012 Forest and Fish Policy Meeting.

4.5 If another Caucus opposes these proposals, the CC, State, and WFPA will work collaboratively within the adaptive management program to present the case for these proposals to the dissenting Caucus. This includes using the dispute resolution process.

4.6 The State, CC, and WFPA agree to advocate for proposals contained in this Agreement (including the Master Schedule) in the adaptive management process and before the Forest Practices Board. The Parties understand the adaptive management process must be used for the proposals to be recommended to the Forest Practices Board, and that these proposals could be modified by that process.

4.7 The Parties will work to ensure that Policy will expeditiously implement the prioritized work plan as recommended annually by Policy and adopted by the Forest Practices Board.

4.8 The State, CC, and WFPA agree that if the proposal in Attachment 3 results in a Forest Practice Board's requirement to review and approve the CMER Master Schedule, or a Board determination about compliance with the Schedule, then the Forest Practices Board failure to act as required, as well as the Board's approval of the schedule or determination about compliance with the Schedule, would be reviewable under RCW 34.05.570(4).

4.9 The State, CC, and WFPA agree, to the extent permitted by applicable law, to seek legislative funding levels to ensure the Washington State Department of Natural Resources (DNR) is allocated no less than a minimum forest practices regulatory program biennial budget of $22.7 million, which is necessary to support the FPHCP, including working together to develop a legislative proposal for a dedicated source of funds.

4.10 The Parties will advocate before the Legislature for continued funding at historic levels for the Forest and Fish Support Account participation grants (including non-profit organizations).

4.11 WFPA and CC will make advocacy to achieve enhanced funding for the DNR forest practices regulatory program a high priority in its annual government advocacy program.

4.12 The Parties acknowledge additional resources are necessary for DNR to more effectively administer the forest practice regulatory program. To the extent permitted by applicable law, the Parties shall work collaboratively to develop a legislative advocacy strategy that obtains additional funds that will strengthen implementation of the forest practices regulatory program.

4.13 The Parties will meet within ninety (90) days from the commence of each regular legislative session to discuss their respective legislative goals and priorities relating to matters covered by this Agreement, and will attempt to reach consensus on these goals and priorities. During this meeting, the Parties will discuss, among other things, a joint strategy for achieving the funding goals and objectives contemplated in this Agreement.

V. Additional Terms and Conditions

5.1 Final Agreement. This Agreement embodies the final and entire understanding of the Parties pertaining to this subject matter and supersedes all prior agreements and understandings, except that all confidentiality agreements related to this dispute are unchanged by this Agreement.

5.2 Severability. If any term or provision in this Agreement is determined to be illegal or unenforceable, all other terms and provisions in this Agreement shall remain effective and shall be enforced to the full extent permitted by law.

5.3 Jointly Drafted. The Parties agree that this Agreement was jointly drafted, that the Agreement shall not be deemed prepared or drafted by any one Party, and no inference or rule of construction shall be applied based on the assumption that any individual Party or subset of the Parties drafted any provision in this Agreement.

5.4 Modification. This Agreement may not be modified, altered, or amended, except pursuant to an instrument in writing signed by all Parties.

5.5 Good Faith. All Parties shall exercise their good faith and diligence in cooperating to carry out the provisions of this Agreement.

5.6 Jurisdiction for Disputes. This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought under this Agreement shall be in Superior Court for Thurston County.

5.7 Settlement Represents Agreement of the Parties – No Admissions Re Merit of Claims. This Agreement is the product of compromise of disputed claims, and it is not to be construed as an admission regarding the correctness of any claims asserted by the CC, WFPA, or the State.

5.8 Media Statements. The Parties agree to cooperate in the preparation of any press releases or statements to the media regarding this Agreement.

5.9 Public Disclosure. The Parties acknowledge that this Agreement, once finalized, is subject to public disclosure under the Public Records Act.

5.10 Informal Dispute Resolution. Prior to seeking judicial review of any dispute under this Agreement, the Parties will first attempt to resolve any dispute under this Agreement through informal dispute resolution procedures. The Party claiming a dispute shall provide notice to the other parties of any claimed dispute. Thereafter, the Parties will meet within thirty (30) days from receipt of the notice to discuss a process and procedures for resolving the dispute. Thereafter, the Parties will meet within fifteen (15) days after the initial meeting to engage in dispute resolution. At the conclusion of this dispute resolution meeting, any Party may elect to pursue any judicial remedy available to that Party.

5.11 Notice. Any notice required under this Agreement shall be in writing, and it shall be provided to the representatives of the Parties via email and certified mail. The notice shall be deemed effective upon receipt by both of the other Parties.

5.12 Representatives. The representatives of the Parties under this Agreement are as follows. These representatives may be changed at any time by providing written notice to each of the other Parties:

To the State:

Commissioner of Public Lands
Washington State Department of
Natural Resources
1111 Washington Street SE
MS 47001
Olympia, WA 98504

Deputy Supervisor for Aquatics
Washington State Department of
Natural Resources
1111 Washington Street SE
MS 47001
Olympia, WA 98504

Director
Washington State Department
of Ecology
P.O. Box 47600
Olympia, WA 98504-7600

Division Chief
AGO Natural Resources Division
P.O. Box 40100
Olympia, WA 98504-0100

To WFPA:	Executive Director 724 Columbia St. NW Suite 250 Olympia, WA 98501	With a copy to:	Jim Lynch, Counsel 925 Fourth Ave. Suite 2900 Seattle, WA 98104
To CC:	Peter Goldman, Counsel Washington Forest Law Center 615 Second Avenue, Suite 360 Seattle, Washington 98104-2245	With a copy to:	Parties listed in Attachment 4.

5.13 Counterparts. This agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives, intending to be bound legally.

STATE OF WASHINGTON

By: _____ Date: 5/24/2012

Peter Goldmark, Commissioner of Public Lands

By: _____ Date: 5-24-12

Ted Sturdevant, Director
Washington Department of Ecology

By: _____ Date: 5/24/2012

Patricia Hickey O'Brien
Senior Assistant Attorney General
Counsel for State of Washington

WASHINGTON FOREST PROTECTION ASSOCIATION

By: _____ Date: _____

Mark Doumit, Executive Director

Its Counsel: _____ Date: _____

WASHINGTON FOREST PROTECTION ASSOCIATION

By: _____ Date: 5/24/12

Mark Doumit, Executive Director

Its Counsel: _____ Date: 5/24/12

WASHINGTON ENVIRONMENTAL COUNCIL

By: _____ Date: _____

Joan Crooks, Executive Director

Its Counsel: _____ Date: _____

CONSERVATION NORTHWEST

By: _____ Date: _____

Its Counsel: _____ Date: _____

WASHINGTON STATE CHAPTER OF SIERRA CLUB

By: _____ Date: _____

Its Counsel: _____ Date: _____

WILD FISH CONSERVANCY

By: _____ Date: _____

Its Counsel: _____ Date: _____

PACIFIC RIVERS COUNCIL

By: _____ Date: _____

Its Counsel: _____ Date: _____

OLYMPIC FOREST COALITION

By: _____ Date: _____

Its Counsel: _____ Date: _____

EXECUTION VERSION

WASHINGTON ENVIRONMENTAL COUNCIL

By: _____ Date: 5/24/12

Joan Crooks, Executive Director

Its Counsel: _____ Date: 5/24/12

CONSERVATION NORTHWEST

By: _____ Date: 5-23-12

Its Counsel: _____ Date: 5/24/12

WASHINGTON STATE CHAPTER OF SIERRA CLUB

By: _____ Date: _____

Its Counsel: _____ Date: _____

WILD FISH CONSERVANCY

By: _____ Date: 5/24/12

Its Counsel: _____ Date: 5/24/12

PACIFIC RIVERS COUNCIL

By: John Korpe Date: 5/24/12

Its Counsel: _____ Date: 5/24/12

OLYMPIC FOREST COALITION

By: _____ Date: 5/24/12

Its Counsel: _____ Date: 5/24/12

Attachment 1
Potential Clarifications to the FPHCP Implementing Agreement

The State will request the following clarification to IA §. 7.1:

7.1 State Funding.

7.1.1 The State will use its best efforts to obtain such funds as may be needed for the State to fully implement the HCP. The appropriations of State funding shall be within the sole discretion of the State Legislature. The amount of State funding expended in the 2003-2005 Biennium for administration of the Department of Natural Resources' forest practices regulatory program was $16.9 million, and the amount of federal funding expended by the State in the 2003-2005 Biennium for administration of the Department of Natural Resources' forest practices regulatory program was $5.8 million, both measured in 2005 dollars.

The State will promptly notify the Services of any appreciable reduction in available funding below $22.7 million measured in 2005 dollars calculated using Personal Consumption Expenditures Price Deflators ("PCE"), or any material change in its financial ability to fulfill its obligations under the HCP (Minimum Funding). For the purposes of section 7.1, the forest practices regulatory program includes region operations, region support, GIS support, FPARS administration, compliance monitoring, training, the Forest Practices Board, the Small Forest Landowner Office, and the adaptive management program.

7.1.2 The State and Services will use the following process if Minimum Funding is not achieved in a specific legislative session:

(a) Within thirty (30) days after the effective date of the legislation causing a funding reduction below Minimum Funding, the State will notify the Services in writing that a funding reduction or material change in financial ability has occurred. If deemed necessary by the Services, the Services will, within ten (10) days after receipt of the State's notice, specify any short-term mitigation measures the State must take to avoid suspension or revocation of the permit until the end of the next legislative session.

(b) The State will convene a process to develop a plan to address the reduced funding ("Plan"). Within thirty (30) days after giving the notice in (a) above, the State will convene a meeting of the Forest and Fish caucus leaders, including the Services, to collaborate on development of the Plan. The Plan will presume that the restoration of the Minimum Funding is required, but may include an explanation of why restoring the Minimum Funding is not necessary to enforce the forest practices regulatory program, including the adaptive management program, or achieve the conservation goals of the HCP for reasons including, but not limited to, improvements or efficiencies in DNR's forest practices regulatory and enforcement program, reductions in timber harvest, or completion of adaptive management CMER projects. The

Plan will also identify a strategy to restore funding to the forest practices regulatory program, including, to the extent permitted by applicable law, a joint advocacy strategy. The State shall complete its Plan by approximately August 15 and forward it to the Services. If the Plan does not restore funding to Minimum Funding, the State must include an explanation of why the funding reduction is not materially necessary to enforce the forest practice regulations, including the adaptive management program, and must also identify alternatives to funding that minimize any adverse effects of the funding reduction on the achievement of the conservation goals of the HCP. As part of the collaboration, if the Services conclude that the funding reduction could provide less on-the-ground protection for covered species or would have a material adverse impact on the achievement of the conservation goals of the HCP, the Services will advise the State so that the State can modify the Plan before it is finalized. The Services may also provide guidance to the State on funding priorities until the end of the next legislative session.

(c) By September 15 in the year prior to the next regular legislative session, the State will submit the Plan to the Services, the Governor, the Legislature, and the Forest Practices Board.

(d) Concurrently, the Services will send the Governor, the Legislature, and the Forest Practices Board a letter that explains the consequences, including suspension or revocation of the incidental take permits, that may result from a failure to provide the necessary funds to implement the Plan.

(e) The State will notify the Services within thirty (30) days after the end of the next regular legislative session whether the Plan has been successfully funded and implemented.

(f) If the Plan is not fully funded or implemented, within thirty (30) days of receipt of the notice in (e), the Services will provide the State with an initial assessment of whether the Plan, as funded or implemented, would enable the State to implement the forest practices regulatory program, including the adaptive management program, at comparable levels and rates to those analyzed by the Services in the Forest Practices Habitat Conservation Plan and their Biological Opinions for Permit issuance.

(g) If the State objects to the Services' initial assessment conducted in (f), within thirty (30) days after the State receives this initial assessment, the Services and State shall use dispute resolution under Par. 12.3.2 of this Agreement for a period not to exceed sixty (60) days.

(h) If the dispute is not resolved by the expiration of this period, the Services shall notify the State in writing whether or not one or both of the Incidental Take Permits will be suspended or revoked. The Services will consider the

following non-exclusive factors when considering whether to suspend or revoke the Incidental Take Permit: (1) the reason(s) for the State's non-achievement of the Plan; (2) DNR's most recent compliance report and the trend of previous years' compliance reports; (3) the number of adaptive management projects conducted, completed, and (if necessary) enacted into rule; (4) the backlog of uncompleted adaptive management projects and the reasons for this backlog; (5) DNR staffing levels; and (6) the extent of the State's monetary shortfall and the prospects for curing this shortfall in the Legislature. The State's successful funding and implementation of the adaptive management program is a mandatory element of the HCP. The Services shall reinitiate consultation pursuant to 50 C.F.R. §401.16 (or its successor provision), on issuance of the ITP, unless the Services determine, based on the best available scientific information, that any deficiencies in the State's funding or implementation of adaptive management would not have a material effect on listed species or their critical habitat.

Attachment 2
Adaptive Management Proposal
Improvements to the Program's Process for Making Decisions

I. Policy:

a. All participants make a renewed commitment to participation, collaboration and striving for consensus.

b. Change Policy committee to FPB appointment of official members as nominated by the respective caucus (voting) that are caucus principals or their designee (alternates should also be designated). The Policy committee will be composed of caucus principles or their designee. The Policy committee will act as a consensus-based body.

c. For purposes of this representation, the following will each have one position on the committee: One designee representing both WDFW and Ecology, Commissioner of Public Lands or designee, Eastside Tribes, Westside Tribes, Conservation Caucus, Industrial Forest Landowners, Small Forest Landowners, Federal Agencies, Local Government.

d. Though Policy committee members may have support staff that can be consulted, Policy members or alternates are the primary participants at Policy meetings.

e. DNR will, by September, 2012, retain an independent neutral facilitator at Policy. As consistent with State contracting laws and requirements, before hiring this Facilitator, DNR will give the Policy committee, or a subcommittee thereof, the opportunity to interview and consider all of the candidates. In making a hiring decision, DNR will give strong consideration to Policy's consensus opinion or, if consensus cannot be reached, to the opinion of the majority of the Policy committee. The Facilitator will be brought in under the following circumstances:

    i. During Stage 1 of Dispute Resolution,
    ii. At the discretion of the co-chairs in anticipation of a substantial issue being discussed,
    iii. Two times per year for a meeting of the caucus principles, and
    iv. For up to nine months following implementation of this agreement in order to enhance the participants' ability to work together as new members are appointed.

II. Work Priorities:

a. Require Policy to develop and implement a prioritized work plan to be adopted by the FPB.

III. Decision Timelines/Dispute Resolution:

a. Revise dispute resolution (DR) timeline to a maximum of two (2) months in Stage 1 for both CMER and Policy and three (3) months for Stage 2.

b. Allow CMER to utilize stage 2 of DR.

c. If a consensus decision is not reached by CMER in stage 2, the issue will be forwarded to Policy by the Adaptive Management Program Administrator for a decision.

d. These changes result in a maximum 5 month DR process, though timelines may be extended by consensus of the committee if substantive progress is being made.

In the event the Policy committee cannot reach consensus following stage 2 dispute resolution on an issue and the issue advances to the Forest Practices Board, the AMPA shall deliver the respective majority and minority recommendations to the Forest Practices Board without a separate formal recommendation. The Forest Practices Board shall reserve its right to ask questions of the AMPA relating to these matters.

Attachment 2-1 is a flow chart that illustrates this proposal.

Attachment 3
Adaptive Management Proposal Master CMER Schedule

Attached is a proposed Master Schedule of Cooperative Monitoring, Evaluation & Research Committee (CMER) work (Attachment 3-1). This schedule is based, in large part, on CMER's current work plan (2013) as approved by the Forest and Fish Policy and the Forest Practices Board. The following are components of this proposal:

1) The Master Schedule will be adopted using the adaptive management program (AMP). The proposal would be approved by the Forest Practices Board, reviewed periodically, and likely changed over time as projects are completed and/or re-prioritized.

2) Once the Master Schedule is approved by Forest and Fish Policy and the Forest Practices Board, it must be reviewed and updated at least every four years. The Master Schedule will prioritize projects for the next 20 years at each 4-year review.

3) The AMP will complete work according to the Master Schedule once approved by the Forest Practices Board, or as it is amended by the Board after using the adaptive management program.

4) By the May 2014 Forest Practices Board meeting and every two years thereafter, the AMP administrator will report to the Forest Practices Board on the progress of the adaptive management program. The report will include a description of the progress made in implementing the Master Schedule, including work completed, projects that are ongoing and on schedule, those projects that are behind schedule, and the Policy response to final CMER reports.

5) At the next regular Forest Practices Board meeting after presentation of the progress report, the Forest Practices Board will make a final determination whether the AMP is in substantial compliance with the Master Schedule.

6) The Forest Practices Board determination and findings will be included in the DNR annual report to the Services in the year the determination is made.

7) If the Board determines that the AMP is not in substantial compliance with the Master Schedule, the Board shall so notify the Services by letter within 30 days of that determination

8) When this proposal is finalized, it should include any recommended changes to the adaptive management process that detail the development of the Master Schedule, review and approval, and how it will be used to guide AMP work.

9) By 2031, all of the prioritized projects on the Master Schedule, as amended by the Board, will be completed in accordance with this proposal. By 2040, all of the projects on the Master Schedule, as amended by the Board, will be completed in accordance with this proposal.

Attachment 4
FORESTS AND FISH CONSERVATION CAUCUS

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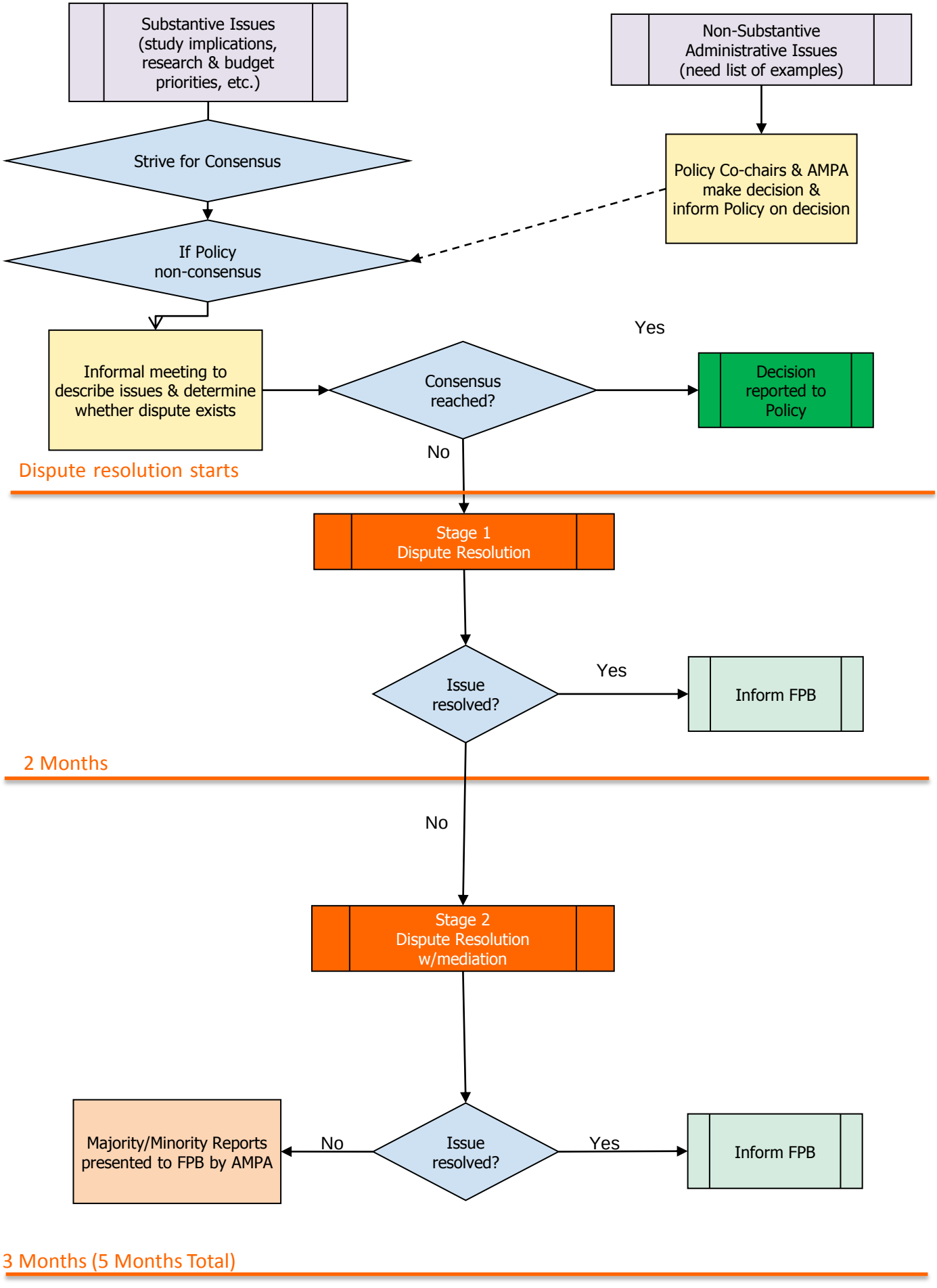
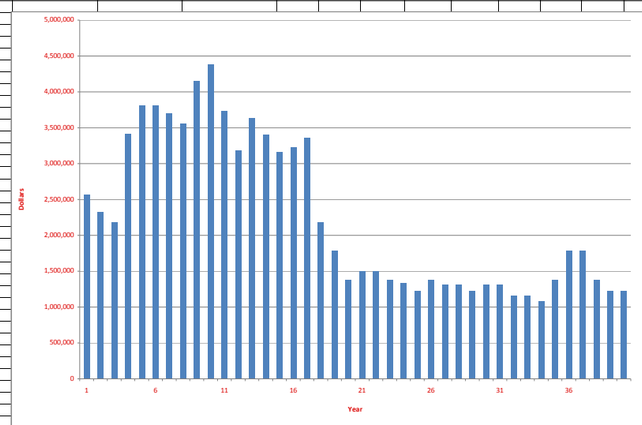
Attachment 2-1
Policy Decision-Making Process for Non-CMER Proposal



Recommended FP-HCP Adaptive Management Program Priority Projects

Confidential - Under Confidential Agreement

	Project	Project Priority	Targeted Completion Date*	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	2050	2051	2052	
	CMER Staff - work on projects			405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	405000	
	Project Support			325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	325000	
	Project Administration			350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	350000	
1	Type N Experimental Buffer Treatment Project in Hard Rock Lithologies	1		237,000	114,000																																							351,000
2	Type N Experimental Buffer Treatment Project - Hard Rock- amphib genetics - resample	1						175,000	385,000	350,000	25,000																																	935,000
3	Type N Experimental Buffer Treatment Project - Soft Rock Lithologies	1		360,000	382,000	75,000	360,000	360,000	150,000	75,000																																		1,762,000
4	Eastside Type N Forest Hydrology	1		350,000	75,000																																							425,000
5	Eastside Type N Riparian Effectiveness	1		75,000	75,000	150,000	350,000	350,000	350,000	350,000	350,000	350,000	150,000	75,000																														2,625,000
6	Buffer Integrity - Shade effectiveness (amphibian response)	1		25,000																																								25,000
7	Type N Extensive Westside - Temperature (Baseline status)	1		7,500	50,000																																							57,500
8	Eastern Washington Riparian Assessment (EWRAP)	1		50,000																																								50,000
9	Bull Trout Overlay Solar Radiation	1																																										0
10	Bull Trout Overlay Temperature/Shade	1		150,000																																								150,000
11	Eastside Type F Riparian Effectiveness (BTO add-on)	1		45,000	20,000																																							65,000
12	Hardwood Conversion	1		2,000	2,000	2,000	73,000																																					79,000
13	Type F Extensive East & Westside - Temperature (Baseline status)	1		7,500	50,000																																							57,500
14	Mass Wasting Effectiveness Monitoring (Post mortem buffer effectiveness)	1																																										0
15	Unstable Slopes Criteria Evaluation and Development (new UPSAG)	1		50,000	75,000	Pending final scoping and mining Post Mortem data, a full-blown project may not be needed.																																						125,000
16	Road Sub-Basin-Scale Effectiveness Monitoring - Resample	1										75,000	700,000	150,000	75,000																													1,000,000
17	Forest Practices and Wetlands Systematic Literature Review	1		50,000																																								50,000
18	Forested Wetlands Effectiveness Study	2		75,000	100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	100,000																														2,200,000
19	Wetlands Program Research Strategy	2			50,000	75,000																																						
20	Wetland/Stream Water Temp Interactions	2				100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	100,000																													2,200,000
21	Wetland Hydrologic Connectivity	2														100,000	150,000	350,000	350,000	150,000	100,000																							1,200,000
22	Wetlands Management Zone Effectiveness Monitoring	2								100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	100,000																									2,200,000
23	Amphibians in Intermittent Streams	2					100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	150,000	100,000																											
24	Type N Extensive Eastside - Temperature (Baseline status)	2			50,000	150,000	150,000	150,000	150,000	100,000																																		750,000
25	Westside Type F Riparian Prescription Monitoring	2			100,000	150,000	350,000	350,000	350,000	350,000	350,000	350,000	150,000	150,000	100,000																													
26	Landscape-Scale Effectiveness Monitoring	2				100,000							150,000	350,000	350,000	350,000	350,000	150,000	150,000	100,000																								
27	Watershed Scale Assessment of Cumulative Effects (sed & temp)	2					100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	100,000																												2,200,000
28	Road Prescription-Scale Effectiveness Monitoring	3			100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	100,000																														0
29	Windthrow Frequency, Distribution and Effects	3														100,000	150,000	350,000	350,000	350,000	150,000	100,000																						1,550,000
30	Eastside Type N BCIF	3										100,000	150,000	350,000	350,000	350,000	350,000	350,000	350,000	350,000	150,000	100,000																						2,950,000
31	Type F Experimental Buffer Treatment	3																100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	100,000																	2,200,000
32	Type F Extensive East & Westside - Vegetation (Baseline status)	3									100,000	150,000	150,000	150,000	100,000																													800,000
33	Type F Extensive East & Westside - Temperature (Resample)	3								150,000	350,000	350,000	150,000	75,000	75,000	350000	350,000	150,000	75,000	75,000																								2,150,000
34	Type F Extensive East & Westside - Vegetation (Resample)	3																								150,000	150000	150,000	150,000	75,000	75,000							150,000	350000	350,000	150,000	75,000	75,000	1,900,000
35	Type N Extensive East & Westside - Vegetation (Baseline status)	4													100,000	150,000	150,000	150,000	150,000	100,000																								800,000
36	Type N Extensive East & Westside - Temperature (Resample)	4												150,000	350,000	350,000	150,000	75,000	75,000	150,000	350000	350,000	150,000	75,000	75,000																			2,300,000
37	Type N Extensive East & Westside - Vegetation (Resample)	4																											150,000	150,000	150,000	150,000	75,000	75,000				150,000	350,000	350000	150,000	75,000	75,000	1,900,000
38	Pathways of Riparian Stand Development to Maturity	4														100,000	150,000	150,000	150,000	150,000	75,000	100,000																						875,000
39	Effectiveness of RMAP Fixes	4																			100,000	150,000	350,000	350,000	150,000	150,000	350,000	350,000	150,000	100,000														2,200,000
40	Westside Type N BCIF	5															76,000					81,000																						157,000
41	Type N Experimental Buffer Treatment Project - Hard Rock	6																			347,000	156,000				216,000																		719,000
42	Type F Performance Target Validation	6																100,000	150000	350,000	350,000	150,000	100,000																						1,200,000
43	Mass Wasting Buffer Integrity - Windthrow	6														See Windthrow frequency, distribution and effects above - is this the same project? Could RILs be used as a strata or covariat in a larger study?																											0
44	Road Surface Erosion Model Validation/ Refinement	6																	100,000	150,000	350,000	150,000	150,000	75,000	100,000																			1,075,000
1	Wetlands Overlay Project	6																																										
3	Wetlands Intensive Monitoring	6																								100,000	150,000	350,000	350,000	350,000	150,000	100,000	150,000	150,000	75,000	75,000									
2	Wetlands Mitigation Effectiveness (deprioitized by CMER/ Policy)	6																																										
				2,564,000	2,323,000	2,182,000	3,413,000	3,815,000	3,815,000	3,705,000	3,555,000	4,155,000	4,380,000	3,730,000	3,180,000	3,630,000	3,406,000	3,155,000	3,230,000	3,355,000	2,180,000	1,780,000	1,380,000	1,505,000	1,505,000	1,380,000	1,330,000	1,230,000	1,380,000	1,305,000	1,305,000	1,230,000	1,305,000	1,305,000	1,155,000	1,155,000	1,080,000	1,380,000	1,780,000	1,780,000	1,380,000	1,230,000	1,230,000	



Project Priority Legend
1 - Current projects
2 - CWA projects (not already implemented in 1 above)
3 - Three caucuses agree
4 - Conservation caucus and landowners agree
5 - Conservation caucus and state agree
6 - Conservation caucus only

* To be completed consistent with dates in schedule prior to adoption

CMER Work Plan projects listed below will be prioritized and budgeted at a later date by CMER/Policy.
Note: Order is not representative of review priority. Some project may be dropped pending review of recent literature and some projects may be added pending final results of CMER projects, further review and evaluation of "critical questions" in CMER's 2013 work plan, and unforeseen needs of Policy and the Board. Projects already on Policy's "Task List" do not apply.

DFC Validation Program (Rule Tool)
- DFC Plot Width Standardization
- DFC Site Class Map Validation
- DFC Trajectory Model Validation
- DFC Aquatic Habitat

Eastside Type F Riparian Rule Tool Program
- Eastside Temperature Nomograph
- Eastside Type F Channel Wood Characterization
- Yakima River Radiotelemetry

Eastside Type F Riparian Effectiveness Program
- Groundwater Conceptual Model

CMZ Delineation Program
- CMZ Screen and Aerial Photo Catalog and CMZ Boundary Identification Criteria
- Consistency and Accuracy of CMZ Boundary Delineations

CMZ Validation Program
- Projects yet to be Identified

Unstable Landform Identification Program (Rule Tool)
- Shallow Rapid Landslide Screen for GIS (Eastside)
- Landslide Hazard Zonation (priority 3 watersheds)

Glacial Deep-Seated Landslides Program (Rule Tool)
- Evapo-Transpiration Model Refinement
- Landslide Classification
- Groundwater Recharge Modeling and Model Refinement
- Board Manual Revision

Mass Wasting Validation Program (Intensive)
- Method to Assess Harmful Cumulative Sediment Inputs

Roads Validation Program and Cumulative Sediment Effects
- Intensive Watershed-Scale Monitoring to Assess Cumulative Effects

Forest Chemicals Program (Effectiveness)
- Projects yet to be Identified

Non CMER projects

Policy will discuss the following projects and incorporate any that involve CMER into the above schedule, or discuss other approaches for completion, prior to sending this CMER Master schedule to the FPB for approval (which will be done in time to meet the December 31, 2013 FPB adoption deadline in 2.4 of this Agreement).

		Non CMER Projects	Who is responsible?	NOTES
	ST			
Fish Passage Rule Group				
Fish Passage targeting Small Forest Landowners Program (New Non-CMER)				
		Non CMER Project	DNR/WDFW	
		Non CMER Project	WDF/DNR	
		Non CMER Project	DNR	
		Non CMER Project	WDFW/CMER?	
		Non CMER Project	WDFW/DNR	the result of inventory
Unstable Landform Identification Program (Rule Tool)				
		Non CMER Project	DNR	
Mass Wasting Effectiveness Monitoring Program				
		Non CMER Project	DNR	
Riparian rule tool				
		non CMER Project	DNR	
Wetlands rule tool				
		non CMER Project	DNR	
		?	CMER/DNR/ECY?	

WAC 222-12-045
*Adaptive management program.

In order to further the purposes of chapter 76.09 RCW, the board has adopted and will manage a formal science-based adaptive management program (program), as set forth in WAC 222-08-160(2). Refer to board manual section 22 for program guidance and further information.

(1) **Purpose:** The purpose of the program is to provide science-based recommendations and technical information to assist the board in determining if and when it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve resource goals and objectives. The board may also use this program to adjust other rules and guidance. The goal of the program is to effect change when it is necessary or advisable to adjust rules and guidance to achieve the goals of the forests and fish report or other goals identified by the board. There are three desired outcomes: Certainty of change as needed to protect targeted resources; predictability and stability of the process of change so that landowners, regulators and interested members of the public can anticipate and prepare for change; and application of quality controls to study design and execution and to the interpreted results.

(2) **Program elements:** By this rule, the board establishes an active, ongoing program composed of the following initial elements, but not to exclude other program elements as needed:

(a) **Key questions and resource objectives:** Upon receiving recommendations from the Timber/Fish/Wildlife (TFW) policy committee, or similar collaborative forum, the board will establish key questions and resource objectives and prioritize them.

(i) Projects designed to address the key questions shall be established in the order and subject to the priorities identified by the board.

(ii) Resource objectives are intended to ensure that forest practices, either singularly or cumulatively, will not significantly impair the capacity of aquatic habitat to:

(A) Support harvestable levels of salmonids;

(B) Support the long-term viability of other covered species; or

(C) Meet or exceed water quality standards (protection of beneficial uses, narrative and numeric criteria, and antidegradation).

(iii) Resource objectives consist of functional objectives and performance targets. Functional objectives are broad statements regarding the major watershed functions potentially affected by forest practices. Performance targets are the measurable criteria defining specific, attainable target forest conditions and processes.

(iv) Resource objectives are intended for use in adaptive management, rather than in the regulatory process. Best management practices, as defined in the rules and manual, apply to all forest practices regardless of whether or not resource objectives are met at a given site.

(b) **Participants:** The board manages the program and empowers the following entities to participate in the program:

- The cooperative monitoring evaluation and research committee (CMER);
- The TFW policy committee (and/or similar collaborative forum);
- The adaptive management program administrator; and

• Other participants as directed to conduct the independent scientific peer review process. The program will strive to use a consensus-based approach to make decisions at all stages of the process. Specific consensus-decision stages will be established by CMER and approved by the board. Ground rules will follow those established by the TFW process as defined in the board manual.

(i) **CMER.** By this rule, the board establishes a cooperative monitoring evaluation and research (CMER) committee to impose accountability and formality of process, and to conduct research and validation and effectiveness monitoring to facilitate achieving the resource objectives. The purpose of CMER is to advance the science needed to support adaptive management. CMER also has ongoing responsibility to continue research and education in terrestrial resource issues. CMER will be made up of members that have expertise in a scientific discipline that will enable them to be most effective in addressing forestry, fish, wildlife, and landscape process issues. Members will represent timber landowners, environmental interests, state agencies, county governments, federal agencies and tribal governments from a scientific standpoint, not a policy view. CMER members will be approved by the board. This will not preclude others from participating in and contributing to the CMER process or its subcommittees. CMER shall also develop and manage as appropriate:

(A) Scientific advisory groups and subgroups;

(B) Research and monitoring programs;

(C) A set of protocols and standards to define and guide execution of the process including, but not limited to, research and monitoring data, watershed analysis reports, interdisciplinary team evaluations and reports, literature reviews, and quality control/quality assurance processes;

(D) A baseline data set used to monitor change;

(E) A process for policy approval of research, monitoring, and assessment projects and use of external information, including the questions to be answered and the timelines; and

(F) A biennial research, monitoring, and assessment work plan to be presented to the TFW policy committee at their regular April meeting beginning in 2015 and at least every two years thereafter.

(ii) **TFW policy committee (policy committee).** The policy committee is established to consider the findings of CMER research and monitoring and to make recommendations to the board related to forest practices rules, board manual sections, and/or other guidance. Policy committee membership consists of caucus principals or their representatives from the following nine caucuses:

• Industrial private timber landowners;

• Nonindustrial private timber landowners;

• Environmental community;

• Western Washington tribal governments;

• Eastern Washington tribal governments;

• County governments;

• Department of natural resources;

• State departments of fish and wildlife and ecology; and

• Federal agencies (including National Marine Fisheries Service, U.S. Fish and Wildlife Service, and U.S. Environmental Protection Agency.

Policy committee members or their representatives are the primary participants for discussion and decisions at policy committee meetings. Technical or scientific staff may attend policy committee meetings for consultation and staff member or visitors may attend policy committee

meetings, but refrain from decision making. The policy committee will base consensus on one vote from each of the nine caucuses. The policy committee will act as a consensus-based body.

Beginning in April 2014, the policy committee shall, among other responsibilities, and in cooperation with CMER, prepare for presentation to the board at their regular May meeting:

(A) A CMER master project schedule prioritizing all CMER research and monitoring projects through 2031;

(B) Assurances that the CMER work plan projects are scheduled according to the CMER master project schedule;

(C) A review and update of the CMER master project schedule at least every four years; and

(D) Assurances that all of the projects on the master project schedule, as amended by the board, will be completed by 2040.

(iii) **Adaptive management program administrator (program administrator).** The department will employ a full-time independent program administrator to oversee the program and support CMER. The program administrator will have credentials as a program manager, scientist, and researcher. The program administrator will:

(A) Make reports to the board and have other responsibilities as defined in the board manual.

(B) Work with the policy committee and CMER to develop the CMER master project schedule and present it to the board at their regular May 2014 meeting;

(C) Report to the board every two years, beginning at their regular May 2015 meeting on:

(I) Progress made to implement the CMER master project schedule and recommended revisions;

(II) The status of ongoing projects including adherence to scheduled timelines; and

(III) Policy committee's responses to all final CMER reports.

(iv) **Forest practices board (board).** The board, among other responsibilities, shall:

(A) Require the program to complete work according to the CMER master project schedule as amended by the board;

(B) Determine whether the program is in substantial compliance with the CMER master project schedule every two years, beginning at the regular August 2014 meeting; and

(C) Notify the National Marine Fisheries Service and the U.S. Fish and Wildlife Service by letter within thirty days after the regular August meeting if the board determines the program is not in substantial compliance with the CMER master project schedule.

(c) **Independent scientific peer review process.** By this rule, the board establishes an independent scientific peer review process to determine if the scientific studies that address program issues are scientifically sound and technically reliable; and provide advice on the scientific basis or reliability of CMER's reports. Products that must be reviewed include final reports of CMER funded studies, certain CMER recommendations, and pertinent studies not published in a CMER-approved, peer-reviewed journal. Other products that may require review include, but are not limited to, external information, work plans, requests for proposal, subsequent study proposals, the final study plan, and progress reports.

(d) **Process:** The following stages will be used to effect change for managing adaptive management proposals and approved projects. If consensus cannot be reached by participants at any stage, the issue will be addressed within the dispute resolution process as defined in (h) of this subsection.

(i) **Proposal initiation:** Adaptive management proposals can be initiated at this stage by any of the participants listed in (b) of this subsection to the program administrator, or initiation may be proposed by the general public at board meetings. Proposals must provide the minimum information as outlined in the board manual and demonstrate how results of the proposal will

address key questions and resource objectives or other program rule and/or guidance issues. The board may initiate proposals or research questions in the course of fulfilling their duties according to statute.

(ii) **Proposal approval and prioritization:** The program administrator will manage the proposal approval and prioritization process at this stage and consult with CMER on the program workplan. CMER proposals will be forwarded by the program administrator to policy and then to the board. The board will make the final determination regarding proposal approvals and prioritization. The board will act on proposal approval and prioritization in a timely manner.

(iii) **CMER implementation of proposal:** Board approved proposals are systematically implemented through CMER at this stage by the program administrator.

(iv) **Independent scientific peer review:** An independent scientific peer review process will be used at identified points within this stage of implementation depending upon the study and will be used on specified final studies or at the direction of the board.

(v) **CMER committee technical recommendations:** Upon completion, final CMER reports and information will be forwarded at this stage by the program administrator to policy in the form of a report that includes technical recommendations and a discussion of rule and/or guidance implications.

(vi) **Policy committee petitions and recommendations to the board:** Upon receipt of a CMER report or a board requested action, the policy committee will prepare a report for the board outlining recommended actions including additional research, rule petitions, and/or guidance recommendations. When completed, the recommendations including rule petitions and the original CMER report and/or other information as applicable will be forwarded by the program administrator to the board for review and action. Policy committee recommendations for rule amendments to the board will be accompanied by formal petitions for rule making (as described in WAC 222-08-100 and RCW 34.05.330). The policy committee will use the CMER results to make specific recommendations to the board on:

(A) The regulatory scheme of forest practices management (Title 222 WAC rules and board manual);

(B) Voluntary, incentive-based, and training programs affecting forestry;

(C) The resource objectives; and

(D) CMER itself, adaptive management procedures, or other mechanisms implementing the recommendations contained in the most current forests and fish report.

(vii) **Board action to accept petitions for rule making and/or recommendations from the policy committee:** Upon receiving recommendations from the policy committee for rule petitions and/or recommendations for guidance, the board will take appropriate and timely action. There will be a public review of all petitions as applicable. The board will make the final determination.

(e) **Biennial fiscal and performance audits.** The board shall require biennial fiscal and performance audits of the program by the department or other appropriate and accepting independent state agency.

(f) **CMER five-year peer review process.** Every five years the board will establish a peer review process to review all work of CMER and other available, relevant data, including recommendations from the CMER staff. There will be a specified, but limited, period for public review and comment.

(g) **Funding.** Funding is essential to implement the adaptive management program, which is dependent on quality and relevant data. The department shall request biennial budgets to support the program priority projects and basic infrastructure needs including funding to staff the

adaptive management program administrator position. A stable, long-term funding source is needed for these activities.

(h) **Formal dispute resolution process for CMER and policy committee.** If consensus cannot be reached through the adaptive management program process, participants will have their issues addressed by this dispute resolution process. Potential failures include, but are not limited to:

• The inability of policy to agree on research priorities, program direction, or recommendations to the board for uses of monitoring and/or research after receiving a report from CMER;

• The inability of CMER to produce a report and recommendation on schedule; and

• The failure of participants to act on policy recommendations on a specified schedule.

Key attributes of the dispute resolution process are:

(i) Specific substantive and benchmark (schedule) triggers will be established by the board for each monitoring and research project for invoking dispute resolution;

(ii) The dispute resolution process is available to and can be initiated by both CMER and the policy committee to resolve disputes that result in the course of their respective processes. Formal dispute resolution involves two stages and may be applied at any level of the adaptive management process. Any participating policy committee caucus, board approved CMER member, or the board, may invoke stage two, if agreement is not reached in stage one, within the specified time (or if agreements are not substantially implemented) as follows:

(A) Stage one dispute resolution will be an attempt by CMER or the policy committee, as applicable, to reach consensus. CMER and the policy committee have up to two months to reach consensus under stage one; unless otherwise agreed upon by CMER or the policy committee if substantive progress is being made. Any party may move the process to stage two after an issue has been in dispute resolution before CMER or the policy committee for two months. The time periods commence from the date the dispute resolution process is invoked.

(B) Stage two dispute resolution in CMER or the policy committee will be either mediation or arbitration. Within one month, one or the other will be picked, with the default being mediation unless otherwise agreed. Stage two will be completed within three months (including the one month to select the process) unless otherwise agreed based on substantive progress.

(C) If stage two dispute resolution within CMER does not result in consensus, the program administrator will forward the dispute to the policy committee for a decision, which could include initiation of the dispute resolution process within the policy committee.

(D) If stage two dispute resolution within the policy committee does not result in consensus, the program administrator will report the majority and minority recommendations to the board. The board will make the final determination regarding dispute resolution.

[Statutory Authority: RCW 76.090.040 [76.09.040], 76.09.370, and WAC 222-08-032. WSR 13-20-006, § 222-12-045, filed 9/19/13, effective 10/20/13. Statutory Authority: RCW 76.09.040. WSR 05-12-119, § 222-12-045, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9). WSR 01-12-042, § 222-12-045, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040. WSR 87-23-036 (Order 535), § 222-12-045, filed 11/16/87, effective 1/1/88.]