

1 **FOREST PRACTICES BOARD**
2 **REGULAR BOARD MEETING**
3 February 11, 2014
4 Natural Resources Building
5 Olympia, Washington
6

7 **Members Present**

8 Aaron Everett, Chair, Department of Natural Resources
9 Bill Little, Timber Products Union Representative
10 Bob Guenther, General Public Member/Small Forest Landowner
11 Carmen Smith, General Public Member/Independent Logging Contractor
12 Court Stanley, General Public Member
13 Dave Somers, Snohomish County Commissioner
14 David Herrera, General Public Member
15 Joe Stohr, Designee for Director, Department of Fish and Wildlife
16 Heather Ballash, Designee for Director, Department of Commerce
17 Julie Morgan, Designee for Director, Department of Agriculture
18 Paula Swedeen, General Public Member (participated by phone from 9 a.m. – 2:45 p.m.)
19 Tom Laurie, Designee for Director, Department of Ecology
20

21 **Members Absent**

22 Vacant, General Public Member
23

24 **Staff**

25 Chris Hanlon-Meyer, Forest Practices Division Manager
26 Marc Engel, Forest Practices Assistant Division Manager
27 Patricia Anderson, Rules Coordinator
28 Phil Ferester, Senior Counsel
29

30 **WELCOME AND INTRODUCTIONS**

31 Aaron Everett called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.
32

33 **APPROVAL OF MINUTES**

34 **MOTION:** Bob Guenther moved the Forest Practices Board approve the November 12, 2013
35 meeting minutes as amended.
36

37 **SECONDED:** Tom Laurie
38

39 **ACTION:** Motion passed unanimously (12 support).
40

41 **REPORT FROM CHAIR**

42 Aaron Everett shared the following:

- 43 • The Legislature recognizes the success of the road maintenance and abandonment planning in
44 addressing fish passage barriers.
- 45 • The State Auditor’s Office produced an audit on permitting processes for state agencies. The
46 audit recommended “best practices” for agencies which resulted in legislative bills that would
47 require agencies to collect information to be posted on the website of the Office of the Regulatory
48 Assistance.

- 1 • Water typing is a fundamental issue in how the rules are applied and meeting the resource
2 objectives in Forests and Fish. The gravity of the issue is the cause of the dispute before the
3 Board.
4

5 **PUBLIC COMMENT**

6 None.
7

8 **STAFF REPORTS**

9 Adaptive Management

10 Jim Hotvedt, DNR, provided information about CMER's LEAN pilot projects. He indicated that it
11 has been a slow start as a result of staff capacity. He said the past 3-4 years has seen a reduction in
12 human resources as agencies and industry have fewer resources than when CMER began 10 years
13 ago. He said individual CMER members are looking for additional resources but there is no formal
14 plan in place.
15

16 Rule Making Activity & 2014 Work Plan

17 Marc Engel, DNR, presented a revised work plan reflecting time line adjustments for rule making and
18 the compliance monitoring report.
19

20 **MOTION:** Heather Ballash moved the Forest Practices Board approve the 2014 work plan that
21 reflects a revised completion date for road maintenance and SEPA clarification rule
22 making and for the Compliance Monitoring Biennial Report.
23

24 **SECONDED:** Bill Little
25

26 **ACTION:** Motion passed unanimously (12 support).
27

28 TFW Policy Committee's Work Priorities

29 Stephen Bernath and Adrian Miller, Co-chairs, provided an update on the following projects:

- 30 • Mass Wasting
31 • Type N water typing
32 • Process improvement tools
33

34 Upland Wildlife Working Group

35 Joe Stohr, Washington Department of Fish and Wildlife (WDFW), provided an update on measures
36 taken to improve Western Gray Squirrel (WGS) protection using a voluntary management approach:

- 37 • Notification from DNR Regions to WDFW
38 • DNR to include a note on the Forest Practices Applications (FPAs) Decision Page
39 • WDFW tracking FPAs that trigger WGS hits
40 • WDFW introduced SB 6041 to amend RCW 77.15 to clarify that it is unlawful to *intentionally*
41 destroy eggs or nests of fish or wildlife designated as endangered, threatened or sensitive
42 (including the WGS).
43 • WDFW developing a WGS 2-Year Action Plan
44 • WDFW has developed guidance to provide consistency in implementing the current forest
45 practices voluntary management approach, protection and their habitat.
46

1 Everett referred to staff's January recommendation regarding Taylor's checkerspot butterfly. After
2 reviewing the USFWS critical habitat designation for this species, staff recommended, with WDFW
3 support, continuation of the Board's voluntary cooperative approach and additional application
4 review and outreach to forest landowners within the newly designated areas. The Board had no
5 objections.

6
7 The following staff reports were not discussed:

- 8 • Board Manual Development
- 9 • Compliance Monitoring
- 10 • Northern Spotted Owl Implementation Team
- 11 • Small Forest Landowner Advisory Committee and Small Forest Landowner Office
- 12 • TFW Cultural Resources Roundtable

13 14 **LEGISLATIVE UPDATE**

15 Chris Hanlon-Meyer, DNR, reported on legislative bills that would impact the Forest Practices
16 Program if passed. Bills included HB 2192, SHB 2312, SSB 6478, and HB 2724.

17 18 **CLEAN WATER ACT ASSURANCES**

19 Mark Hicks, Department of Ecology, provided a progress update on the CWA milestones. He said
20 that very few of the projects progress without challenges.

21
22 Everett asked if milestones will be updated as a result of the CMER budget in April. Hicks answered
23 yes.

24 25 **TYPE F/N BREAK DISPUTE RESOLUTION**

26 Jim Hotvedt, DNR, provided background information on the Type F/N water break dispute resolution
27 process and outlined the next step which was to bring the issue to the Board. He provided a timeline,
28 starting with the initiation of the process by the Conservation Caucus in January 2013, the
29 background of the Board's actions to date related to water typing, and the issues under dispute which
30 include the regression model, definitions of fish habitat and off-channel habitat, shared risk
31 assumptions and electrofishing.

32
33 Aaron Everett called on the TFW Policy Committee (Policy) co-chairs and selected members to
34 explain why Policy was not able to conclude the dispute resolution process. Responses included:

- 35 • Disagreement on priorities.
- 36 • Trust deficit among caucus members.
- 37 • Treating every word as important when attempting to complete the Type F Charter.
- 38 • Trying to get into solutions before there was agreement on the problem.
- 39 • Not coming to an understanding of the substantive, technical, data-related issues.
- 40 • Lack of clarity in rules regarding stream-associated wetlands.
- 41 • Disagreement on the meaning of "shared risk."

42
43 Everett asked Bridget Moran, U.S. Fish and Wildlife Service (USFWS), to explain that agency's
44 position on water typing procedures. She said that while the Services knew electrofishing would be
45 used at the beginning of the Habitat Conservation Plan (HCP), the transition period the Services
46 expected has taken too long, and that electrofishing is not a Forest Practices HCP-covered activity.

1 Marc Engel presented a possible motion for consideration regarding Board direction on the Type F/N
2 Break.

3
4 **PUBLIC COMMENT**

5 Chris Mendoza, CMER member, reminded the Board of the process related to the performance
6 reviews conducted on the CMER program and recommended that this be done for other parts of the
7 Adaptive Management Program.

8
9 Rob Kavanaugh spoke on behalf of his petition for rule making to protect the WGS. He noted some
10 recent developments including a possible change in ESA listing status from threatened to endangered.
11 He said while reviewing DNR records he noticed a change in FPA conditioning from DNR's
12 previous administration to the current administration for protecting the WGS.

13
14 **PUBLIC COMMENT ON TYPE F/N BREAK**

15 Mary Scurlock, Conservation Caucus, said her caucus was generally supportive of the motion and
16 suggested adding language to part 1b:

- 17 • "An evaluation of the current regulatory process..."
18 • "...field implementation guidance ~~or~~in addition to rule language..."

19
20 Peter Goldman, Washington Forest Law Center (WFLC), said the interim water typing rule is under-
21 protective, relies heavily on electrofishing, and does not implement the definition of "fish habitat" in
22 WAC 222-16-010. He added that better guidance in the Board manual is needed to protect fish
23 habitat.

24
25 Chris Mendoza, Mendoza Environmental, said he supported part 2 of the motion, i.e., the pilot project
26 to investigate model utility.

27
28 Norm Schaaf, Merrill & Ring, described the established protocols necessary before any electrofishing
29 can occur. He encouraged the Board to support the motion and said he appreciated that data collection
30 would inform the process.

31
32 Blake Murden, Port Blakely Tree Farms, said proper use of electrofishing settings provides for a high
33 level of fish detectability and a low level of injury to fish.

34
35 Tim McBride, Hancock Forest Management, commented that his company's water type
36 modifications have resulted in an approval rating of 99.9 percent the first time by using the protocols
37 in Board Manual Section 13. He suggested changing "may" to "shall" in the last sentence in part 1 of
38 the motion:

- 39 • "Policy mayshall accomplish these tasks through the formation of technical groups..."

40
41 Adrian Miller, Olympic Resource Management, said the motion's specificity will facilitate progress.
42 He added that off-channel habitat is often best defined on the ground, and completing the process
43 outlined in the motion will help to identify the situations where there are vagaries.

44
45 Kevin Godbout, Weyerhaeuser, commented that no data has been presented to prove that the use of
46 electrofishing is a problem. He suggested three changes to the motion:

- 47 • "...minimizing potential site-specific impacts to ESA-listed fish species..." (part 1a);
48 • "...evaluation of published-relevant literature..." (part 1a);

- 1 • “Policy mayshall accomplish these tasks through the formation of technical groups...” (part 1,
2 last sentence)

3
4 Karen Terwilleger, Washington Forest Protection Association (WFPA), listed components of the
5 Forests and Fish Report and Forest Practices HCP water type strategy: fish habitat description, 95
6 percent accuracy, and equitable allocation of risk. She added that good data and science are necessary
7 to formulate the basis of determining the Type F/N break, and that focusing on the one issue will help
8 Policy to move it forward.

9
10 Curt Veldhuisen, Skagit River System Coop, requested that the Board update the manual and create a
11 permanent rule. He said the Board manual guidance is outdated because the science has moved
12 beyond it. In regards to the motion, he said the model was a failure in the North Cascades and he was
13 not convinced that putting additional resources into it would produce a usable product.

14
15 Jim Peters, Northwest Indian Fisheries Commission (NWIFC), commented the Board manual needs
16 updating so it is easier to implement. He stressed that stream typing is very important, to verify the
17 habitat in use now, and the habitat that will be used as fish runs recover. He added that all of the land
18 uses and jurisdictions should use the same water typing system.

19
20 Elaine O’Neil, Washington Farm Forestry Association, said the motion looked pretty good because it
21 supported the use of data to inform the process. She added that small forest landowners do not have
22 millions of dollars to do electrofishing, and said she was concerned that they should somehow have
23 the ability to ground-truth a mapped break. She said the use of LiDAR can improve the process for
24 assessing where to start, but it cannot definitively determine the F/N break without ground-truthing.

25 26 **DIRECTION ON TYPE F/N BREAK**

27 **MOTION:** Carmen Smith moved the Forest Practices Board initiate actions to remedy the
28 Type F water concerns outlined in the majority and minority recommendations of
29 the TFW Policy committee caucuses by obtaining additional information and
30 directing additional work by Policy. These steps are essential for the Board to
31 consider making a final determination of the appropriate approach to take in the
32 development of a permanent water typing rule.

33
34 She further moved the Board and Policy work plans be amended to reflect the
35 following:

36 1) Policy is directed to complete recommendations for options on a permanent
37 water typing rule, beginning with two tasks to be completed and reported to the
38 Board at the May, 2014 meeting:

- 39 a) Development of “best practices” recommendations regarding protocol
40 survey electrofishing, including an evaluation of published literature,
41 minimizing potential site-specific impacts, and options for reducing the
42 overall extent of the surveys’ use;
- 43 b) An evaluation of the process to identify off-channel habitat under the
44 interim water typing rule, including recommended clarifications in field
45 implementation guidance, or rule language. The evaluation must be based,
46 in part, on field review of approved Forest Practices Applications and
47 water type modification forms.

1 Policy may accomplish these tasks through the formation of technical subgroups or
2 other means, as needed, to complete work by the established deadline.

- 3 2) The Adaptive Management Program Administrator is directed to work with
4 Board staff and others, as needed, to scope and initiate a pilot project to re-run
5 the existing hydrologic model using LiDAR data, including at least two
6 watersheds; one westside and one eastside. The Administrator shall make
7 optimal use of contract resources, persons involved with the original
8 development of the model, and LiDAR analytical frameworks completed and
9 in-development by DNR-State Uplands. The objectives of this effort are to:
10 a) Develop quantitative information about the “footprint” of the interim rule,
11 as applied;
12 b) Compare model-based water type designations to on-the-ground Forest
13 Practices Applications and Water Type Modification Forms;
14 c) Investigate additional model utility, such as detection of off-channel
15 habitat, ability to predict physicals & assess footprint effects from using
16 different physicals (i.e., its ability to provide analytical and/or
17 implementation value to different “options” for approaching the various
18 issues raised in the water typing rule dispute memos);
19 d) Provide information that can inform the Board’s basic administrative
20 choices among “map-as-rule” vs. “guidance map with field adjustments.”
21

22 The Board authorizes the Administrator to utilize up to \$100,000 of Forests and
23 Fish Support Account funding to enter into contracts as needed to scope and
24 initiate work before the May, 2014 Board meeting.
25

26 The pilots are to be completed by the August, 2014 Board meeting. The
27 Administrator will present a progress report at the May, 2014 Board meeting,
28 including an estimate of the total funds needed to complete the work directed
29 above.
30

31 **SECONDED:** Bob Guenther
32

33 **AMENDMENT**

34 #1: Dave Somers moved the Forest Practices Board amend the motion as follows:
35

36 ...

- 37 a) Development of “best practices” recommendations regarding protocol
38 survey electrofishing, including an evaluation of ~~published~~ relevant
39 literature, minimizing potential site-specific impacts, and options for
40 reducing the overall extent of the surveys’ use;
41 b) An evaluation of the current rule process to identify off-channel habitat
42 under the interim water typing rule, including recommended clarifications
43 in field implementation guidance, or rule language. The evaluation must be
44 based, in part, on field review of approved Forest Practices Applications
45 and water type modification forms.

46 Policy ~~may~~ shall accomplish these tasks through the formation of technical
47 subgroups or other means, as needed, to complete work by the established
48 deadline.
49 ...

1
2 **SECONDED:** Court Stanley

3
4 **ACTION:** Amended motion passed unanimously.

5
6 **AMENDMENT**

7 #2: Court Stanley moved the Forest Practices Board amend the motion as follows:

8 ...

- 9 a) Development of “best practices” recommendations regarding protocol
10 survey electrofishing, including an evaluation of relevant literature,
11 minimizing potential site-specific impacts to Incidental Take Permits
12 covered species, and options for reducing the overall extent of the surveys’
13 use;

14 ...

15 **SECONDED:** Carmen Smith

16
17 **ACTION:** Amended motion passed unanimously.

18
19 **ACTION ON**

20 **MAIN MOTION:** Motion as amended passed unanimously.

21
22 **PUBLIC COMMENT ON ROAD MAINTENANCE AND ABANDONMENT PLANNING**
23 **(RMAP)**

24 Norm Schaaf, Merrill & Ring, said that the company will meet the 2016 deadline to have its RMAP
25 work completed and will continue to maintain its roads as needed. He said he does not support the
26 rule making because it is redundant; such language already exists in WAC 222-24-051(5)(c) and (d),
27 and subsections (12) and (14).

28
29 Kevin Godbout, Weyerhaeuser, said he did not support the rule making because he does not
30 understand the need for it.

31
32 **RMAP CLARIFICATION RULE MAKING**

33 Gretchen Robinson, DNR, requested that the Board approve filing a CR-101 *Preproposal Statement*
34 *of Inquiry* to add language to the road maintenance rules. She explained that at times, for example
35 after an extreme storm event, landowners can be faced with large amount of road maintenance work
36 necessary to protect public resources. She said DNR wants to clarify that an enforcement mechanism
37 (e.g., notice to comply) for road maintenance can be combined with an agreed-to schedule to
38 accomplish the remainder of the necessary road work. Such a schedule would reflect the relative
39 potential for public resource damage. She emphasized that this concept is consistent with the forest
40 practices standards for public resource protection, and does not affect current Road Maintenance and
41 Abandonment Plans or obligations.

42
43 Marc Engel, DNR, added that in most cases DNR would issue a notice to comply for immediate
44 threats to public resources, and would work with the landowner to agree on a financially feasible plan
45 if needed by the landowner.

1 **MOTION:** Dave Somers moved the Forest Practices Board direct staff to file a CR101
2 Preproposal Statement of Inquiry to notify the public that the Board is considering
3 rule making to clarify road maintenance and planning rules.
4

5 **SECONDED:** Heather Ballash
6

7 **ACTION:** Motion passed unanimously (12 support).
8

9 **PUBLIC COMMENT ON THE MASS WASTING EFFECTIVENESS MONITORING**
10 **PROJECT: A POST MORTEM STUDY**

11 Kara Whitaker, WFLC and Conservation Caucus, highlighted three recommendations to be
12 implemented to help minimize the occurrence of future landslides due to forest practices: acquire
13 additional LiDAR-based digital elevation models; develop additional documentation for all forest
14 practices applications; and prioritize future CMER research of mass wasting.
15

16 Karen Terwilleger, WFPA, stated that she is in agreement with Kara Whitaker's statements. She also
17 thanked Adrian Miller for providing leadership in pulling everyone together, and the conservation
18 caucus for working with the industry caucus to finding a solution that works for everyone.
19

20 **THE MASS WASTING EFFECTIVENESS MONITORING PROJECT: A POST MORTEM**
21 **STUDY EXAMINATION OF THE LANDSLIDE RESPONSE TO THE DECEMBER 2007**
22 **STORM IN SOUTHWESTERN WASHINGTON**

23 Jim Hotvedt, DNR, requested that the Board take no action on the Mass Wasting Study based on the
24 results of the study. He stated that while Policy recommends no action from the Board, it did agree it
25 is necessary to make process improvements in FPA review and compliance monitoring, and to further
26 research and monitor the effectiveness of road and harvest prescriptions to meet mass wasting
27 resource objectives.
28

29 **MOTION:** Bob Guenther moved the Forest Practices Board accept TFW Policy Committee's
30 recommendation to take no action at this time on the Mass Wasting Effectiveness
31 Monitoring Project: An examination of the landslide response to the December
32 2007 storm in Southwestern Washington.
33

34 **SECONDED:** Dave Somers
35

36 **ACTION:** Motion passed unanimously (12 support).
37

38 **PETITION FOR RULE MAKING - WESTERN GRAY SQUIRREL**

39 Marc Engel, DNR, presented the petition for rule making received on January 28, 2014, and said it
40 did not offer any additional or new information than the petitioner previously submitted in November
41 2013.
42

43 Everett asked Board members for their opinion on whether the recent petition provided any new or
44 additional information. All Board Members present agreed there was none.
45

46 **MOTION:** Bill Little moved the Forest Practices Board deny the petition for rule making on
47 Western Gray Squirrel received on January 28, 2014.
48

1 **SECONDED:** Carmen Smith

2

3 **ACTION:** Motion passed unanimously (11 support).

4

5 **EXECUTIVE SESSION**

6 None.

7

8 Meeting adjourned at 3:10 p.m.