

P.O. Box 1010
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February 9, 2022

Re: Feb 2015 SFLO Low Impact PI Update

Washington State Forest Practice Board
P.O. Box 47012
Olympia, WA 98504-7012

Chairwoman Smith and members of the Forest Practices Board:

My name is Ken Miller, co-representing SFLOs and Washington Farm Forestry Association along with Steve Barnowe-Meyer on the TFW Policy Committee. **Seven years ago** today you accepted our WFFA Proposal Initiation (PI) for our RCW & science based Low Impact Template prescriptions for review by the AMP. DNR told us at that time this was the best/most complete PI ever submitted to the AMP. You instructed the AMP to provide recommendations back to you that same year. Clearly the Board members at that time were as naïve as we continue to be about the AMP processes. **L J**

Albeit very, very frustrated by the slow pace of progress, and the recent setback on CMER progress as mentioned in my example during today's BM 22 agenda item, we remain optimistic that it appears things are finally coming to a head within the AMP. The Dispute over the draft Criteria for SFLO Low Impact Alternate Plans will finally address some legislative & rule intent regarding SFLO alternate harvest restrictions – intentions assumed, but rarely discussed/debated within the AMP, likely to have been the source of much conflict over the last 2 decades.

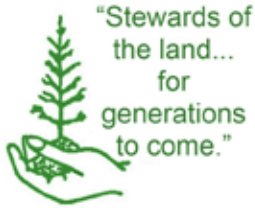
Assuming we can quickly resolve the CMER 6-question process response to outside science, Policy will finally be poised to present you with consensus, or non-consensus recommendations on the RMZ width portions of our 2015 Proposal Initiation. My current best case scenario returns the foundational width portion of our PI to you in November 2022 – worst case, as late as sometime in 2024.

Obviously our 2015 PI is a tough issue for the AMP that is also critical to SFLOs perceptions of being respected & appreciated individually and as full members of the AMP – hence the need to fully follow the processes that at minimum establishes a record of fair and collaborative processes envisioned in the spirit of TFW.

Sincerely,

Ken Miller
Washington Farm Forestry Association





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Re: Board Manual Section 22 AMP agenda item

Washington State Forest Practice Board
P.O. Box 47012
Olympia, WA 98504-7012

Chairwoman Smith and members of the Forest Practices Board:

My name is Ken Miller, co-representing SFLOs and Washington Farm Forestry Association along with Steve Barnowe-Meyer on the TFW Policy Committee. The State Auditor's report emphasized the need for the AMP to review and strengthen our Dispute Resolution process. Colleen has presented some recommended edits to your Board Manual Section 22 guidance. These recommendations all seem appropriate.

The point I wish to make today is to emphasize that for the AMP to work as envisioned in BM 22 we have to walk the talk, regardless of how painful or time consuming! Even well-intentioned shortcuts get us into trouble/create unproductive conflict. Policy is about to try to resolve such an example. It's not appropriate for me to share too much detail but in summary: Policy asked CMER to provide responses to SOP 6-questions on outside science; Policy eventually received two papers, one responsive to the questions, & one not responsive to the questions (but following CMER leadership guidance); all CMER parties were initially involved in the formal Dispute Resolution process; some then wanted to discontinue the process; others wanted to complete the DR process by going into Stage 2, but were denied that option. There are lots of extenuating circumstances, confusion, personnel changes, & blame to go around in both CMER & Policy (in my opinion).

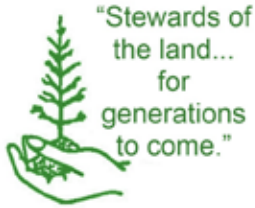
Policy is now trying to sort out next steps and faced with conflicting questions/concerns such as: how much more time is it going to take to complete the process correctly?; should we give CMER clearer instructions & ask them to finish their assignment?; will we learn anything new?; should Policy ignore one parties denial of full DR processes, or as they stated they were: ". . . *deeply aggrieved at the novel interpretation of the CMER dispute resolution protocol that dismissed the mediation stage of our dispute.*"

My bet is that we are going to resolve these questions within Policy's Dispute Resolution process - so you don't have to resolve. If not, updating BM 22 will be a pointless endeavor!

Sincerely,

Ken Miller
Washington Farm Forestry Association





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February 9, 2022

Re: Funds for Dispute Resolution

Washington State Forest Practice Board
P.O. Box 47012
Olympia, WA 98504-7012

Chairwoman Smith and members of the Forest Practices Board:

My name is Ken Miller, co-representing SFLOs and Washington Farm Forestry Association along with Steve Barnowe-Meyer on the TFW Policy Committee. I'm writing in support of the AMPA's "Request for Reallocated Funding for Dispute Resolution".

I wish to share my frustration with, and support for the AMP's Dispute Resolution process. WFFA has called for three Dispute Resolution processes: The first a couple years ago over parts of our 2015 Proposal Initiation that had some good collaboration but was hindered by delays & mediators unfamiliar with AMP issues/processes; the second more recent one over a SFLO Advisory Committee recommendation for Criteria for SFLO Low Impact Alternate Plans that seems off to a good start; and a third from this month's TFW Policy meeting that I'll touch on during the Board Manual Section 22 Agenda item.

While it sometimes feels like the wheels are coming off our AMP processes because we are seeing more frequent calls for Dispute Resolution – I believe the disputes are reason for optimism:

- The Policy Co-chairs (Marc & Meghan) are doing a great job of formalizing & expediting these disputes - intended to collaboratively reach consensus, or bring them to you for finalization so we can all move on.
- DNR has now contracted with a professional mediator that is knowledgeable about the AMP, is known & trusted by the participants, and who will be available to expedite Stage 2 step when it becomes necessary – hence our support for this Budget request.
- With more structure from the Co-chairs, and competent outside help when necessary it seems/feels like we are already beginning to have more open/constructive conversations on tough issues.

You may likely still have to resolve some tough issues, but I believe a more robust Dispute Resolution process will ease your burden and better resolve issues as intended in BM 22.

Sincerely,

Ken Miller
Washington Farm Forestry Association





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Testimony by Elaine Oneil to the Washington State Forest Practices Board on February 9, 2022 – open public comment period

Chairman Smith and members of the Forest Practices Board, I am Elaine Oneil, Executive Director of the Washington Farm Forestry Association. I would like to make a couple of points about the WFFA proposals within the AMP, the regulatory framework generally, and the dispute process specifically.

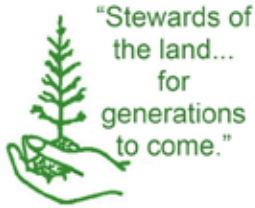
Depending on how you count them there are 6 or 7 disputes in progress within the AMP, 3 (or 4) of which are specifically related to SFLO issues: our westside template which has now officially been in this process for 7 years and in dispute for 2.5, the relatively low impact criteria proposal that was submitted in August 2021 is in dispute, there is a dispute process that was not followed or completed in CMER over the 6 questions that Policy submitted to them about our template back in July 2020, and most recently our request to send the products received from CMER back to them with the request to 'complete the process' in order to give SFLO our 'due process'.

As board members you may be wondering why there are suddenly so many disputes and why we can't get much done in this program despite enormous effort, energy, and cost. Some of it is about the players and their entrenched beliefs overriding opportunities for innovation but it is mostly about process. What we have learned over the past several years is that if we don't hold other people's feet to the fire with respect to the AMP process steps, it is presumed to be a capitulation of our core needs and beliefs. It is anything but that. And it invariably comes back to bite us, so we simply aren't going to do that anymore.

For example, there are processes in place that are supposed to provide clear firewalls between policy and CMER. They were not followed in our first dispute because other caucuses were short-staffed. That won't happen again. There was agreement in policy to send our outside science for an external review. When the response came back somewhat favorable to our proposal it was rejected by others because it didn't 'follow the process' despite their agreement to send it through ISPR at the time. To accommodate others, we agreed to send the template science to CMER where caucus politics appears to have come into play when answering 6 questions. That eventually led to a dispute which then led to some CMER scientists deciding they didn't want to work on it anymore and they walked from the dispute. They wanted to still have a say after walking away. That is a process foul. So, we are now in another dispute over that process foul.

These disputes over process are inevitable in a program that is process based, rather than results based. And the problem is not really a fault of the Adaptive Management Program as it is embedded in a forest practices regulatory framework that is process based, not results based. If we want to see outcomes that are favorable to the **four** pillars of the Forests and Fish agreement, then the entire system will need an overhaul to create a results-based regulatory framework like they did in British Columbia nearly 2 decades ago after their failed attempt at prescription based forest practices rules. In the meantime, SFLO will be focused on ensuring that the AMP **process steps** do not undermine the special status of SFLO in the RCW since that is the overarching framework that new Forest Practices rules and board manual changes must consider.

If the consequence is that we 'gum up the works' then that is an unavoidable temporal condition until there is a reset at the principals level. I'll remind you that the RLI effort was aimed at improved outcomes and it got shot down faster than a clay pigeon at a firing range for Navy Seals. From our perspective it appears others don't want outcomes unless it means taking more timber offline. That isn't acceptable because it fails to take a systems approach to finding solutions to complex biological issues. It also doesn't embrace the four pillars of forests and fish which are but one part of one component of the four H's of salmon restoration: habitat, harvest, hatcheries and hydro.



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February 9, 2022

Re: Board Manual Section 12

Washington State Forest Practices Board
P.O. Box 47012
Olympia, WA 98504-7012

Board Chair Smith and members of the Forest Practices Board:

My name is Steve Barnowe-Meyer and, along with Ken Miller, I have represented small forest landowners and the Washington Farm Forestry Association (WFFA) on the TFW Policy Committee for over five years.

Thank you for this opportunity to provide you input about proposed modifications to Board Manual Section 12 Application of Forest Chemicals.

From August through December 2019, I was the small forest landowner representative member on the Aerial Application of Herbicides on Forestlands Legislative Workgroup created by the Washington State Legislature under Substitute Senate Bill 5597. The Workgroup recommended several improvements to the Forest Practices Program regarding forest chemical spray applications. One of the recommendations was for DNR to involve stakeholders to assist in the development of new guidance and update existing best management practices (BMPs) in Board Manual Section 12, Guidelines for Application of Forest Chemicals. Board Manual Section 12 is the technical guidance to Chapter 222-38 WAC – Forest Chemicals.

In response to that recommendation of the Legislative Workgroup, DNR convened their own workgroup which met between July 2021 and January 2022 to accomplish this task. I was fortunate to be the small forest landowner representative on this multi-faceted group of approximately eighteen individuals – consisting of several TFW Policy caucus representatives, forest landowners, agency staff, industry experts, academia, and staff from a pesticides awareness organization.

Today, you are being asked to approve the new guidance and updated BMPs developed by the Board Manual Section 12 Workgroup. The current Board Manual Section 12 is sorely in need of update and clarifying guidance, since it has not been amended since March of 2002. Aerial spray equipment, technology and BMPs have changed significantly since 2002 and the new Board Manual has been updated to reflect those changes. Likewise BMPs have been updated for identifying surface waters prior to aerial herbicide applications, as well as addressing various weather conditions and factors that may affect drift. New guidance has also been added to provide clarity about maintenance of spray records, communicating about spray activities to adjacent property owners, required residence and agricultural land buffers in

rule, and the posting of spray notices and information to include on posted signs. In addition, the proposed new Board Manual includes information on the multi-agency regulatory structure associated with use of forest chemicals on private forestlands, including herbicides / pesticides and adjuvants, the licensing of applicators, inspections, and investigations of alleged pesticide misuse, product labels, and chemical spill response. Finally, the new Board Manual also provides information on vegetation management options as alternatives to use of forest chemicals, as well as appendices on forest chemical application and permitting resources, and vegetation / pest management resources.

This is the third Board Manual workgroup I have had the pleasure to work on, and was the most collaborative workgroup effort I have personally experienced. The proposed Board Manual Section 12 that you are being asked to approve today is a vast improvement over the current Board Manual and I recommend your approval of it.

Thank you once again for this opportunity to provide you input about proposed modifications to Board Manual Section 12.

Steve Barnowe-Meyer

Washington Farm Forestry Association