



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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October 29, 2009

MEMORANDUM

TO: Forest Practices Board

FROM: Stephen Bernath, Senior Policy Analyst
Water Quality Program
Department of Ecology



SUBJECT: Clean Water Act Assurances

Please find the attached document pulling all the milestones together that Ecology will be tracking for success, to continue to grant Clean Water Act Assurances. I would like to spend the limited time I have with you at the Forest Practices Board meeting, reviewing some of the near term milestones for 2009 and 2010 in particular, to help you in your work planning for the next year.

I hope to make this a regular agenda item at each Forest Practices Board meeting so you are aware of progress and, where appropriate, you can provide assistance in meeting these milestones. Please let me know if you have any questions or concerns.

Attachment



Milestones to Retain the CWA Assurances - July 2009

As noted in Ecology's review paper, "Ecology contends that compliance with the milestones described herein would demonstrate sufficient progress to satisfy the CWA assurances and the adaptive management provisions of the state water quality standards (WAC 173-201A-510(3)). Because extending the assurances is based on meeting the specific research and administrative milestones identified above by the specific dates listed, failure to meet any milestone would be considered a basis for potentially withdrawing the assurances at that time. In evaluating compliance with the milestones established herein, Ecology will consider the cause for missing any milestones and be considerate of the fact that:

- The state and nation are both experiencing a severe economic recession and it may take a couple of years before funding to properly support the AMP is even available;
- Unexpected and uncontrollable circumstances may cause deviations from this schedule, such as catastrophic events causing the loss of study sites; and
- Until a project has a study design developed, it is not possible to identify an accurate time frame for its completion (or in some cases to determine if the project remains a CWA priority)."

2009 Milestones:

By July 2009, and in subsequent budget and planning years, the AMP Administrator with the assistance from the Policy and CMER committees will send to the Forest Practices Board a revised CMER work plan and budget that places key water quality studies as high priorities as described in section II(c) regarding the adaptive management program.

By July 2009, and in subsequent planning years, the projects identified by Ecology in Table 1 will be reflected in the CMER budget and work plan in a manner that establishes a priority schedule for study development. Failure to meet any of the milestones identified without prior consent by Ecology may be viewed as a basis to revoke the CWA assurances at that point in time.

By September 2009, the Forest and Fish Policy Budget Committee will identify a strategy that will be implemented with caucus principal support to secure stable, adequate, long-term funding for the AMP.

By October 2009, DNR will complete the Charter for the Compliance Monitoring Stakeholder Guidance Committee and determine which issues identified herein related to compliance monitoring will be dealt with by the committee. This is intended to help move these issues forward on schedule as well as to flag the items for which an alternative process for resolution is needed.

By December 2009, the AMP program administrator, with the assistance of CMER and Policy, will complete the ongoing training sessions on the AMP protocols and standards for CMER, and Policy. This is intended to remind participants of the agreed upon protocols. Opportunity should

also be provided to identify portions of the protocols and associated rules that need revision to improve performance or clarity. Any identified improvements to the Board Manual or regulations should be implemented at the soonest practical time. Subsequent to this effort, the administrator will offer to provide this training to the Board.

By December 2009, the AMP Manager with the assistance of the co-chairs of Policy and CMER will initiate a process for flagging projects for the attention of Policy that are having trouble with their design or implementation. This process should identify projects not proceeding on a schedule reflecting a realistic but expedient pace (i.e., a normal amount of time to complete scoping, study design, site selection, etc.).

By December 2009, DNR in partnership with Ecology and with the aid of the CMP stakeholder guidance committee will develop general plans and timelines for exploring options and data collection methods for assessing compliance with rule elements such as water typing, shade, wetlands, haul roads and channel migration zones. The goal is to initiate these programs by December 2011.

By December 2009, DNR with assistance of Ecology and WDFW, will evaluate the existing process for resolving field disputes and identify improvements that can be made within existing statutory authorities and review times. Although resolution of the specific issue at hand should be a goal, the overarching purpose of this milestone is to establish a process that will identify the basis for the dispute and to put in place revised guidance, training, reporting pathways, other measures that will minimize the reoccurrence of similar disputes in the future. This process should consider how to best involve the appropriate mix of both policy and technical participants to thoroughly resolve the issue at hand.

2010 Milestones:

By January 2010, as part of the regional RMAP annual meeting process, DNR should ensure opportunities are being provided in all the regions to obtain input from Ecology, WDFW, and tribes formally participating in the forests and fish process regarding road work priorities.

By February 2010, DNR in consultation with WDFW, Ecology, and the tribes will develop a prioritization strategy for water type modification. The intent of this strategy will be to manage the number of change requests sent to cooperating agencies for 30-day review so it is within the capacity of those cooperators to respond to effectively. The strategy should consider standardizing the current ad hoc process of holding monthly coordination meetings with agency and tribal staff in all the DNR regions. This should allow group knowledge and resources to be more efficiently used to evaluate change requests.

By March 2010, DNR Forest Practices will establish online guidance that clarifies existing policies and procedures pertaining to water typing. The intention is to ensure regional staff and cooperators remain fully aware of the most current requirements and review processes for changing water type and coordinating the review of multidisciplinary teams.

By June 2010, DNR with consultation with Ecology and WDFW (or with the CMP stakeholder guidance committee), will establish a framework for certification and refresher courses for all participants responsible for regulatory or CMP assessments. This will be focused on aiding in the application of rules regarding bankfull width, CMZ boundaries, application of road rules, and wetlands. Consideration should be given to including a curriculum of refresher courses on assessing difficult situations.

By June 2010, DNR, Ecology, and WDFW will meet to review existing procedures and recommended improvements needed to more effectively track compliance at the individual landowner level. The goal will be to ensure the compliance pattern of individual landowners can be effectively examined by October 2010. This should consider the types and qualities of enforcement actions that occur (e.g., conference notes, notices of correction, stop work orders, penalties). These procedures and their effectiveness in identifying compliance trends at the landowner level will be reassessed by Ecology by October 2012 to ensure the program provides sufficient information to take action where appropriate to remove the CWA assurances and take any other necessary corrective action with landowners having persistent compliance problems.

By July 2010, DNR with the assistance of Ecology, will assess the primary issues associated with riparian noncompliance (using the CMP data) and formulate a program of training, guidance, and enforcement believed capable of substantially increasing the compliance rate – with a goal of getting greater than ninety percent compliance by 2013. Ecology will consider of the rating of noncompliance since not all infractions have the same effect on public resources (e.g., is it predominately at levels within reasonable field method limits or likely to occur even with due diligence) when determining if this compliance target rate milestone has been satisfied.

By July 2010 Ecology in partnership with DNR, and in consultation with the SFL advisory committee, will develop a plan for evaluating the risk posed by SFL roads for the delivery of sediment to waters of the state.

By July 2010, Policy, in consultation CMER, will develop a strategy to examine the effectiveness of the Type N rules in protecting water quality at the soonest possible time. This strategy needs to include at a minimum:

- i. Ranking and funding of the Type N studies as highest priorities for CMER research.
- ii. By July 2012, developing a protocol for identifying with reasonable accuracy the uppermost point of perennial flow, or develop documentation demonstrating the spatial and temporal accuracy of the existing practice-used to identify this point;
- iii. By September 2012, completing a comprehensive literature review examining the effect of buffers on streams physically similar to the Type Np waters in the forest practices rules prior to completion of the Type N basalt effectiveness study. This should be conducted or overseen by CMER (or conducted by an independent research entity).

By October 2010, DNR in partnership with Ecology, and in consultation with WDFW, the Tribes, and the SFL advisory committee, will design a sampling plan to gather baseline information sufficient to reasonably assess the success of the alternate plan process. This sampling plan should include how to select sample sites, how to best document the content and

assumptions contained in the alternate plan, what to monitor and how frequently to do so, and responsibilities for who will conduct the sampling. The goal of this effort is to initiate data collection in the 2011 field season.

By December 2010, the AMP Program administrator shall initiate the process of obtaining an independent review of the Adaptive Management Program. This review shall be done by representatives of an independent, third party research organization and include:

- i. An examination of the structure and function of the program, based on its technical performance, fiscal efficiency, and overall accountability.
- ii. An assessment of the performance and efficiency of the consensus-based decision processes.
- iii. A review of the rigor of CMER science and whether it productively adds to the body of Pacific Northwest region science to confidently address the L-1 Questions.
- iv. An evaluation of the interactions of science and policy within the AMP.
- v. Identification of any different approach the AMP could employ to assure a more certain and timely outcome of projects and commensurate changes to rules and guidelines.

Upon completion, the results of this independent review shall be taken to CMER and Policy to develop responses and recommendations for any needed corrections. Within six months of completion, the report along with the responses of the CMER and Policy committees will be provided to the Board. Ecology will be engaged in discussions with cooperators to examine ways to initiate this important task as soon as possible.

2011 Milestones:

By February 2011, DNR in consultation with WDFW, Ecology, and the Tribes will complete an evaluation of the relative success of the water type change review strategy. Results of this review would be used to further refine the strategy.

By December 2011, DNR with the assistance of large landowners, will provide summary information for all industrial landowners having RMAPs. The summary information will include at a minimum: Date RMAP completed, total miles of road covered under the RMAP, total miles of road brought up to standards, total number of fish barriers removed, and a brief statement describing the strategy for bringing all roads into compliance by 2016 that demonstrates even-flow or otherwise provides confidence compliance will be attained by 2016. If reasonable and feasible, the summary will show the annual progress on road and barrier improvement that has occurred since the inception of the RMAP, and DNR will provide a master summary for all industrial landowners combined.

2013 Milestones:

By November 2013 Ecology in partnership with DNR, and in consultation with the SFL advisory committee will prepare a summary report that assesses the progress of SFLs in bringing their roads into compliance with road best management practices, and any general risk to water quality posed by relying on the checklist RMAP process for SFLs. If a significant portion of SFL roads are estimated to pose a risk of damage to public resources, then a report will be prepared in time to brief the Legislature in December 2013.

Table 1 CMER Research Milestones:

| Table 1: List of Research Milestones to Support Continuation of CWA Assurances | |
|---|---|
| | Task Description |
| 2009 | Complete: <u>Hardwood Conversion – Temperature Case Study</u> |
| | Study Design: <u>Wetland Mitigation Effectiveness</u> |
| | Study Design: <u>Testing the Accuracy of Unstable Landform Identif.</u> |
| 2010 | Complete: <u>Mass Wasting Prescription-Scale Monitoring</u> |
| | Implement: <u>Wetland Mitigation Effectiveness (Pilot)</u> |
| | Study Design: <u>Amphibians in Intermittent Streams (Phase III)</u> |
| | Study Design: <u>Type N Experimental in Incompetent Lithology</u> |
| | Scope: <u>Mass Wasting Landscape-Scale Effectiveness</u> |
| | Scope: <u>Eastside Type N Effectiveness (new study needed)</u> |
| 2011 | Complete: <u>Bull Trout Overlay Temperature</u> |
| | Complete: <u>Solar Radiation/Effective Shade</u> |
| | Implement: <u>Eastside Type N Effectiveness</u> |
| | Implement: <u>Amphibians in Intermittent Streams (Phase III)</u> |
| | Implement: <u>Type N Experimental in Incompetent Lithology</u> |
| | Study Design: <u>Mass Wasting Landscape-Scale Effectiveness</u> |
| | Scope: <u>Wetland Management Zone Effectiveness Monitoring</u> |
| 2012 | Complete: <u>Type N Experimental in Basalt Lithology</u> |
| | Complete: <u>Buffer Integrity-Shade Effectiveness</u> |
| | Complete: <u>Wetland Mitigation Effectiveness</u> |
| | Complete: <u>Amphibians in Intermittent Streams (Phase III)</u> |
| | Implement: <u>Testing the Accuracy of Unstable Landform Identif.</u> |
| | Scope: <u>Wetland/Stream Water Temperature Interactions</u> |
| 2013 | Complete: <u>First Cycle of Extensive Temperature Monitoring</u> |
| | Scope: <u>Effectiveness of RMAP Fixes</u> |
| | Scope: <u>Wetland Hydrologic Connectivity</u> |
| 2014 | Study Design: <u>Effectiveness of RMAP Fixes</u> |
| | Scope: <u>Type F Experimental Buffer Treatment</u> |
| 2016 | Complete: <u>Type N Experimental in Incompetent Lithology</u> |
| | Scope: <u>Watershed Scale Assess. of Cumulative Effects</u> |
| 2017 | Complete: <u>Eastside Type N Effectiveness (new study needed)</u> |
| | Study design: <u>Watershed Scale Assess. of Cumulative Effects</u> |
| 2018 | Complete: <u>Roads Sub-basin Effectiveness</u> |
| | Implement: <u>Watershed Scale Assess. of Cumulative Effects</u> |