

1 **FOREST PRACTICES BOARD**

2 **REGULAR BOARD MEETING**

3 May 20, 2009

4 Natural Resources Building

5 Olympia, Washington

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8 **Members Present:**

- 9 Peter Goldmark, Chair of the Board, Department of Natural Resources
10 Brad Avy, Designee for Director, Department of Agriculture
11 Brent Bahrenburg, Designee for Director, Community, Trade and Economic Development
12 Bill Little, Timber Products Union Representative
13 Carolyn Dobbs, General Public Member (*arrived at 3:00 p.m.*)
14 David Hagiwara, General Public Member
15 David Herrera, Skokomish Tribe (*absent in the afternoon*)
16 Doug Stinson, General Public Member/Small Forest Landowner
17 Joe Stohr, Deputy Director, Department of Fish and Wildlife
18 Norm Schaaf, General Public Member (*participated by phone for DFC & Fixed Width topics*)
19 Sherry Fox, General Public Member/Independent Logging Contractor
20 Tom Laurie, Designee for Director, Department of Ecology

21
22 **Absent:**

23 Dave Somers, Snohomish County Commissioner

24
25 **Staff:**

- 26 Julie Sandberg, Acting Forest Practices Division Manager
27 Marc Engel, Acting Forest Practices Assistant Division Manager
28 Patricia Anderson, Rules Coordinator
29 Phil Ferester, Assistant Attorney General

30
31 **WELCOME AND INTRODUCTIONS**

32 Peter Goldmark called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.
33 Patricia Anderson, Department of Natural Resources (DNR or Department), provided an emergency
34 safety briefing.

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36 **APPROVAL OF MINUTES**

37 **MOTION:** Bill Little moved to approve the February 11, 2009 meeting minutes as amended.

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39 **SECONDED:** Sherry Fox

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41 **Board Discussion:**

42 Sherry Fox noted a correction on page 12, line 26 that the word “zero” should be replaced by “over.”

43
44 Fox also asked if the letter of support for federal stimulus money referenced on page 5, line 27, had
45 been completed. Staff responded it had not.

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47 **ACTION:** Motion passed unanimously.

1 **MOTION:** Tom Laurie moved to approve the March 31 and April 10, 2009 meeting minutes.

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3 **SECONDED:** Joe Stohr

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5 **Board Discussion:**

6 Fox noted duplication in the March 31 minutes on page 6, lines 8-17.

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8 **ACTION:** Motion passed unanimously.

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10 **PUBLIC COMMENT ON GENERAL BOARD TOPICS**

11 Stephen Dylan, Hancock Forest Management, explained Hancock's revenue losses this year resulting
12 from a 30 percent harvest reduction. He said prior to the economic downturn the company was on
13 track to complete road maintenance and abandonment (RMAPs) by July 2016. However, because of
14 the company's firm belief in sustainable forest stewardship, RMAPs must be balanced with
15 completing environmental enhancement projects and meeting financial obligations. He said the
16 company believes that good stewardship is good business.

17
18 Karl Forsgaard, Washington Forest Law Center (WFLC), said they still have major legal and policy
19 concerns with the proposal to extend the Clean Water Act assurances past 2009. He offered the
20 following additional comments for the Department of Ecology (DOE) to consider:

- 21 1. Adequate funding will not be available to conduct the required studies.
- 22 2. The Adaptive Management Program has major structural and political problems and DOE does
23 not have a proposed fix. The timeline is unrealistic.
- 24 3. The proposal fails to account for existing science that shows the impacts of current logging under
25 the current rules on water quality in the state.
- 26 4. The proposal fails to comply with the Clean Water Act requirement to prepare total maximum
27 daily loads (TMDLs) for all impaired surface waters.

28 He said he recognized this is still a draft and encouraged DOE to address the WFLC's concerns
29 before issuing its decision at the end of June.

30
31 Peter Goldman, WFLC, urged the Board to consider a historical view of the timber industry. After the
32 Northwest Forest Plan the industry enjoyed 14 great years of high log prices and increasing output
33 and profits. But now the situation has changed with international market, development pressure, etc.
34 He suggested new strategies for helping the industry through the regulatory changes: A stronger
35 Growth Management Act, a development rights transfer system, smart timber taxes, ecosystem
36 payment services, local wood purchasing incentives, true independent forest certification, and
37 creative financing mechanisms.

38
39 Rick Dunning, Washington Farm Forestry Association (WFFA), explained the main focus of WFFA
40 is education and a sensible voice against over regulation and over taxation. He provided a handout to
41 the Board which explained the issue and asked the Board to look back at public comments given to
42 the Board at the March 31, 2009 meeting highlighting WFFA's involvement and attempt at
43 collaboration with Forests and Fish Policy (Policy) and with the Board. He pointed out the second
44 page of his handout was an op-ed piece that ran in the Capital Press and soon was to be published in
45 The National Woodlands magazine, which he called a desperate attempt by frustrated citizens. He
46 said when they agreed to Forests and Fish, small forest landowners were promised the Forest

1 Riparian Easement Program, the Small Forest Landowner Office, and an alternate planning process
2 for the achievement of less costly prescriptions. He said essentially those are gone now.

3
4 Miguel Perez-Gibson, Conservation Caucus, provided a list of Species of Concern (state). He said
5 marginal economic incentives may be insufficient to prevent forest land conversion, and that
6 purchase of development rights may be the only reliable way to retain land and working forests. He
7 asked the Board to be cautious with regulatory incentives as a means to maintain a viable timber
8 industry.

9
10 **FOREST INDUSRTY ECONOMIC IMPACTS**

11 Goldmark read a letter dated May 20, 2009 from himself and Jay Manning, Director of the
12 Department of Ecology. The letter focused on convening a multi-stakeholder workgroup to examine
13 how to ensure that RMAPs meet the 2016 deadline in light of the forest industry slowdown,
14 convening a series of meetings of caucus principals to discuss renewing collaborative implementation
15 of the rules, and promoting working forests as a cornerstone of Washington’s economic and
16 environmental strategies.

17
18 Fox noted that the letter mentioned a low interest loan program for landowners to continue work
19 identified in RMAPs, and asked if the intent was a federal or state focus, and how the money would
20 be raised. Goldmark said there are no limits as to where they may look.

21
22 Fox asked if the expectation is for Board participation. Goldmark said yes, and that he would work
23 with staff to come up with strategies that will be brought back to the Board.

24
25 Joe Stohr commended Jay Manning and Peter Goldmark for bringing these topics to the surface.

26
27 **PUBLIC COMMENT FOR COLLABORATION AND WORKING RELATIONSHIPS**

28 Tim McBride, Washington Forest Protection Association (WFPA), said landowners feel that they
29 have a huge investment in trying to maintain the Forests and Fish Habitat Conservation Plan (HCP),
30 and they would appreciate a more collaborative working environment to see that all of the Forests
31 and Fish goals are implemented. He spoke positively about the Goldmark-Manning letter and asked
32 that staff check with industry for creative ideas.

33
34 Ken Miller, WFFA, said he didn’t think stakeholders have dealt with economic viability in any
35 meaningful way. CMER and Policy agendas all point to less harvest and blinders are put on where
36 other science points in any other direction. He said he felt the desired future condition (DFC) mess
37 could have been dealt with if real collaboration had taken place and there was a commitment to all
38 the cornerstones including economic viability. He questioned if DFC would still be on the agenda if
39 someone other than landowners had proposed the cost savings to offset the economic losses of
40 increased DFC basal area.

41
42 Pete Heide, WFPA, explained that collaboration and consensus requires common goals, equal voices,
43 leadership, and facilitation. He stressed that some people are going to have to change their approach
44 if the system is going to work.

45
46 Peter Goldman, WFLC, said that collaboration and cooperation are key. He pointed out that in 1982
47 the Board committed to dealing with cumulative effects in the Rollie Gephardt report which never got

1 implemented. In 1992 the Board committed to watershed analysis which never got funded, and there
2 was a commitment in 1996 to Northern Spotted Owls which ended in litigation. Good collaboration is
3 an agreement to stick by one's ideals, to stick with the science, and to use good policy. He said the
4 environmental community and the timber industry must fight together to protect the industry.
5

6 Miguel Perez-Gibson, Conservation Caucus, asked Goldmark what the order of actions will be and
7 how the process will work. Goldmark said it will be clearer within the next couple of weeks.
8

9 **COLLABORATION AND WORKING RELATIONSHIPS**

10 Chuck Turley, DNR, said this agenda item was provided for the Board to have a discussion on the
11 program's working relationships. Under the Board's previous chair, DNR conducted almost 90
12 interviews with individuals from the various TFW/Forests and Fish entities to try to understand what
13 is needed to improve relationships. He referred to the Goldmark-Manning letter and said there is now
14 a renewed focus to try to move forward with some concrete steps.
15

16 Tom Laurie expressed concern about the Adaptive Management Program, and that DFC rule making
17 highlighted the underlying problems. A consensus decision wasn't reached at the adaptive
18 management level, and the Board, in effect, accepted that failing which continues to plague the Board
19 today. He quoted the Goldmark-Manning letter, "It is time to examine and reestablish our collective
20 commitment to a consensus-driven process for achieving our common goal ..." and stressed that is
21 not a small matter. Again using DFC as an example, he said it was amazing how the relatively small
22 impacts of the proposed rule change had such large implications. The focus has been largely on
23 process, namely the adaptive management process.
24

25 Laurie added that ensuring forest roads be maintained by 2016 must be a priority, and it was going to
26 take collaboration to find solutions.
27

28 Goldmark said he was very aware of the delicate nature of adaptive management. He explained he
29 and Director Manning wanted to convene the caucus principals to attempt to reinvigorate the vision
30 that created the Forests and Fish approach, and create a new vision of how to go forward in our state
31 with our forests, the timber industry, climate change and many issues. He said when the principles
32 work together collaboratively it will help improve the whole process. It will make adaptive
33 management work better, but will also make the Board's job much easier.
34

35 Doug Stinson challenged the conservation caucus to become educated about forest management – to
36 buy a couple of acres of forest land with a nice fish stream running through it, manage it, and try to
37 get a six percent return on the investment.
38

39 Fox said there is not a common goal among the caucuses, and until that changes there will be no
40 collaboration.
41

42 Stohr mentioned a facilitator and mediator may be helpful.
43

44 Goldmark said he had been in contact with the Ruckelshaus Center, and with funding being an issue
45 everyone needed to work together.
46

47 Fox said she felt facilitation was necessary.

1
2 David Herrera explained that commitment was necessary and his tribe was committed to
3 collaboration.

4
5 **PUBLIC COMMENT FOR DESIRED FUTURE CONDITION RULE MAKING**

6 Jim Peters, Northwest Indian Fisheries Commission (NWIFC), spoke in support of Proposal 1, but
7 said the Commission could support Proposal 3 if the Adaptive Management process showed that
8 impacts would not be significant. He thanked the Commissioner for the letter and said the tribes will
9 be with them in any process that protects natural resources, salmon resources, and the fishing and
10 timber industries.

11
12 Peter Goldman, WFLC, thanked the Commissioner and staff for drafting the motion that would
13 propose to continue the DFC discussion until August. He suggested the directive to CMER should be
14 whether Proposal 3 provides less protection than what already exists in the HCP with the 20 tree per
15 acre exemption.

16
17 Miguel Perez-Gibson, Conservation Caucus, said very few rule changes have been adopted over the
18 last decade which is different from the previous decade. This means there's been a fair degree of
19 regulatory certainty, and much collaboration along the way.

20
21 Pete Heide, WFLC, said it was important that Proposal 2 continue to be considered. It provides
22 additional environmental protection for the resources and at significantly less cost than the other
23 proposals.

24
25 Karl Forsgaard, WFLC, said his organization supports the staff recommendation to direct CMER to
26 examine Proposal 3.

27
28 **DESIRED FUTURE CONDITION RULE MAKING**

29 Lenny Young and Chuck Turley offered a staff recommendation to:

- 30 1. Defer action on DFC until its August 12, 2009 meeting;
31 2. Direct CMER to estimate whether implementation of Proposal 3 would result in environmental
32 impacts that are significantly different from the environmental impacts of implementing
33 Proposal 1, and provide the Board with a written report at least one week prior to the Board's
34 August 12, 2009 meeting; and
35 3. Direct staff to re-file the CR-102 with a new anticipated adoption date to provide public notice
36 of the ongoing rule making.

37
38 Turley explained Proposal 3 can be tied to the underlying study because the data was collected for all
39 trees on site, and the 20 trees per acre were not excluded in the basal area calculations. He said staff
40 didn't believe Proposal 2 could be tied to the study because the proposal allows timber harvest to take
41 place in areas where harvest is not allowed under current rule, namely site class III and IV forest
42 lands on large streams.

43
44 Tom Laurie asked if staff's intent was that CMER use existing information in their analysis, and not
45 conduct new research. Young answered yes.

1 Fox asked for more information about why staff didn't include Proposal 2. Turley said the proposal
2 was developed during a time when the stakeholders were discussing options, and it never got to the
3 point where all parties were comfortable with it.
4

5 David Hagiwara asked if the CR-102 would continue to include all three of the proposals. Young said
6 yes.
7

8 Joe Stohr wanted to know if this action was likely to help the Board be in a better position to make a
9 decision. Young said there wasn't complete certainty that CMER would develop a unanimous
10 opinion. If not, the Board would receive a written description of the views at least one week prior to
11 the August 12 meeting.
12

13 Stohr said he thought the environmental threshold determination allowed Proposal 2 to be kept on the
14 table. Turley explained that the SEPA determination was that none of the proposals would likely
15 result in a significant adverse environmental impact when compared to current rule. The staff
16 recommendation is for CMER to analyze whether counting the 20 trees per acre in the basal area
17 calculation would still produce the desired future condition. Young added that staff wasn't trying to
18 take away any of the Board's options or shape the Board's decision, but the recommendation was
19 only for Proposal 3 to undergo CMER's analysis.
20

21 Brent Bahrenburg made the following motion:

22 **MOTION:** Since the Forest Practices Board's April 10, 2009 meeting, Board staff has
23 been attentive to concerns expressed by some Board members and caucus
24 representatives as to what action the Board will take on DFC at its regularly
25 scheduled meeting on May 20, 2009. Staff has attempted to address a major
26 concern that has been expressed: that the alternative recommended to the
27 Board (Proposal 3) was generated for the Board after the petition for rule
28 making was delivered to the Board by the Forests and Fish Policy Committee,
29 and has not been reviewed by the Cooperative Monitoring, Evaluation and
30 Research Committee (CMER). To address this concern, I move that the Board
31 1. Defer action on DFC until its August 12, 2009 meeting;
32 2. Direct CMER to estimate whether implementation of Proposal 3 (in other
33 words, allowing the 20 trees per acre to be counted toward 325 square feet
34 basal area requirement) will affect the ability of riparian stands to achieve
35 desired future condition at age 140, and provide the Board with a written
36 report at least one week prior to the Board's August 12, 2009 meeting.
37 3. Direct staff to re-file the CR-102 with a new anticipated adoption date to
38 provide public notice of the ongoing rule making.
39

40 **SECONDED:** Doug Stinson
41

42 **Board Discussion:**

43 Norm Schaaf said he supported deferring until August, but wished to amend the motion.

44 **AMENDMENT #1:** Norm Schaaf moved to amend the motion by proposing that Proposal 2 be
45 included in the referral to CMER.
46

47 **SECONDED:** Sherry Fox

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Board Discussion:

Herrera asked if adding Proposal 2 to the CMER analysis would require additional data collection, and David Hagiwara asked if August 12 was a reasonable timeframe.

Goldmark said he hoped the DFC rule making could be resolved collaboratively and expeditiously. He said he knew Proposal 3 was not necessarily everyone’s favorite, but a reasonable compromise. But, he added, it is the Board’s decision.

After a short break and additional discussion and consultation with CMER co-chairs, Young answered that a CMER evaluation by the August meeting would not be possible if Proposal 2 were included. This was due to additional analysis and possibly additional information gathering. He stressed the importance of framing the question exactly the way the Board wanted it answered.

Brad Avy said he’d rather have all questions resolved even if it takes more time.

Bahrenberg asked how much more time it would take to include Proposal 2. Young said he couldn’t estimate with confidence.

ACTION ON

AMENDEMENT #1: Motion failed. (4 support (Stinson, Little, Avy Schaaf) / 7 oppose

AMENDMENT #2: Tom Laurie moved to amend the motion to change the language of the second (CMER) portion of the motion to: *Direct CMER to estimate ~~whether~~ implementation of the degree to which implementing Proposal 3 ... will affect the ability of riparian stands to achieve desired future condition ...*

SECONDED: David Herrera

Board Discussion:

Fox indicated she didn’t believe the time extension and CMER evaluation would help prepare the Board for a decision.

Young said he agreed that the amendment would improve the recommendation. Instead of getting a simple yes/no answer, the Board would receive more descriptive information about how Proposal 3 would likely affect the stand over time, and what the eventual configuration of the stand would look like.

ACTION ON

AMENDMENT #2: Motion passed. (9 Support / 1 Oppose (Avy) / 1 Abstention (Schaaf)

ACTION Motion passed. (8 Support / 3 Oppose (Fox, Avy, Schaaf)

NEW BUSINESS

Laurie initiated a discussion on the prospects of building in some administrative flexibility for landowners who have already invested in the activities associated with applying for forest practices

1 management in the riparian inner zone. Specifically he wanted to discuss flexibility in forest practices
2 application (FPA) renewal timeframes in the event the Board adopts a new DFC rule.

3
4 Turley said in DNR's current procedure requests for FPA renewals are accepted within 60 days of the
5 expiration date. Renewals are for two years. It would be possible to broaden the time window in
6 which landowners are allowed to request renewals. Young added it would be allowed for only one
7 renewal period. Turley said any renewals approved after a new rule was effective would be subject to
8 the new rules.

9
10 Goldmark said he was sensitive to the current delicate economic situation of the industry, and
11 supported not requiring landowners to resurvey and make those investments all over again if the
12 Board adopts a new rule. He suggested for FPAs approved prior to rule adoption, possibly increasing
13 the renewal request window to 12 months before FPA expiration.

14
15 Hagiwara asked when rules become effective after adoption. Turley answered if the Board adopts a
16 rule on August 12 it would be effective early October.

17
18 Laurie asked Stephen Bernath to help explain the concept. Bernath said before the effective date of a
19 new DFC rule, a landowner would be allowed to submit an early request for renewal of an unexpired
20 application. As with any renewal, this would allow their application under current rules to be active
21 for two additional years.

22
23 Sherry Fox thanked Laurie for moving this idea forward, and said she supported it. She asked
24 whether it should be put in the form of a motion.

25
26 Turley said the Board could request that the Board's Chair as Commissioner direct DNR staff to be
27 prepared to accept these early requests for FPA renewals.

28
29 From the audience Peter Goldman requested that the Commissioner reopen the meeting to a comment
30 period because this subject was not on the agenda.

31
32 Several Board members asked questions about the affected FPAs, but Turley and Young didn't have
33 answers immediately. Herrera suggested putting this discussion on the August agenda so the Board
34 could make an informed decision.

35
36 Goldmark said he wanted to abide by transparency as much as possible and allow time for public
37 comment.

38 **PUBLIC COMMENT ON THE DFC APPLICATION RENEWAL CONCEPT**

39 Peter Goldman, WFLC, said applications wouldn't be necessary because landowners can already
40 withdraw permits and apply the next day to get a new two-year permit. He said it was a quid pro quo
41 for implementing the adaptive program, and he rejected it. He added there were legal implications for
42 DNR to change an existing policy, which could require SEPA. He said this was exactly the lack of
43 collaboration his organization is concerned about.

44
45
46 Pete Heide, WPFA, first commented on the apparent new way of managing the Board's agenda –
47 simply jump up from the audience and demand to speak. He stressed that what the Board is

1 discussing is not new trees being harvested, but trees that would have been harvested if the economy
2 hadn't worsened. He then explained renewals are different than new applications. On the applications
3 the Board was discussing, the work of preparing an application was done but harvest hadn't occurred
4 because the demand for logs was down. He said preparing new applications means additional work
5 for the applicant, and there was a significant difference between a Class III application and Class II in
6 terms of the work required and necessary review.

7
8 Becky Kelly, Washington Environmental Council, urged the Board not to approve this provision. She
9 said the science showed the (basal area target) number is wrong five years ago, and yet landowners
10 have continued to be allowed to operate under incorrect numbers. She stressed this was very
11 important to the integrity of the adaptive management process. She explained that prior to the
12 effective date of the Forests and Fish rules there was a huge round of permits for a total acreage the
13 size of Rhode Island. She said the Board should not do something that would cause that type of thing
14 to happen again. She added there is currently a tension between the scientific uncertainty inherent in
15 the HCP and the economic downturn, and taking an action like this would exacerbate that tension and
16 not be helpful to the long-term viability of the HCP.

17
18 Jim Peters, NWIFC, said the potential impacts needed to be looked at and understood collectively.
19 Knowing where these applications are located would help to determine the impacts on the resources.

20 21 **Board Discussion:**

22 Laurie asked staff to provide the following information for the Board:

- 23 1. Number of FPAs that include a DFC analysis which have not been harvested.
- 24 2. The difference in costs to landowners to renew an application vs. withdrawing and re-applying.
- 25 3. The percentage of these applications that are large landowners and small landowners.
- 26 4. Total number of FPAs and number of affected acres.
- 27 5. Costs to DNR for renewals vs. new FPAs; expected workload.

28
29 Goldmark explained that there is no requirement that landowners notify DNR after harvest is
30 complete, which would add complexity to the task. Young agreed and said that particular part of
31 Laurie's request would be a labor intensive, manual exercise to get the information about applications
32 in which harvests hadn't been completed, and this information changes day to day.

33
34 Laurie said he didn't want to add a costly exercise.

35
36 Goldmark said the Board would be revisiting this subject in August.

37 38 **PUBLIC COMMENT FOR CMER WORK PLAN AND BUDGET**

39 Chase Davis, Upper Columbia United Tribes, requested that the eastside Type F channel instream
40 wood study be added back into the Fiscal Year (FY) 2010 budget in the amount of \$175,000. He said
41 the recently released publication of the CMER review states two important findings: Eastside work
42 has been neglected, and CMER work in general suffers from a lack of integration. He said the work
43 plan has already been postponed one year and postponing another year will likely mean a lost
44 sampling opportunity and a conflict with the upcoming Type N hydrology study scheduled for 2011.

45
46 Miguel Perez-Gibson, Conservation Caucus, questioned whether a 70 percent reduction in the CMER
47 budget is sustainable for the Adaptive Management Program.

1 Karl Forsgaard, WFLC, said no caucus supports the reduced funding level as a viable Adaptive
2 Management Program. The viability of the HCP depends on the viability of the Adaptive
3 Management Program. The incidental take permit that went with that HCP is premised on the
4 viability of the program and without adequate funding it's likely the HCP will be challenged.

5
6 **CMER WORK PLAN AND BUDGET**

7 Darin Cramer, DNR, requested approval of the FY2010 CMER Work Plan and Budget, as well as the
8 Board's support and commitment in addressing funding needs.

9
10 Fox said she was concerned about the proposed budget. She said it didn't reflect good business sense
11 because it starts projects in 2010 that wouldn't necessarily be funded in 2011. She asked if there were
12 any discussions about funding the high priority projects for the years 2010 and 2011, and not
13 budgeting for other projects at all until funds are known to be available.

14
15 Cramer said the work plan does not start any projects in FY2010. He said all the projects that are
16 listed are active ongoing projects. It does show new projects starting in FY2011 under the assumption
17 that we can obtain extra funding by then.

18
19 Avy asked for Cramer's assessment of the program's ability to deliver overall. Cramer offered his
20 opinion that expectations are unreasonable for a largely voluntary organization. It relies on
21 participation from people who already have full time jobs. The program's authority is completely
22 decentralized. There isn't a project on the list that most people don't think needs to be done, and done
23 quickly. But projects take years to develop and complete. And we continue to add other things for the
24 program to accomplish. Also, the program is consensus-based, which takes time, and when you
25 overlay the nature of the relationships now with the huge amount of work needed to be accomplished,
26 it makes for an untenable situation.

27
28 Fox repeated her concern with the budget showing a negative \$2 million in 2011. She said there
29 should have been a budget more focused on completion, with other projects put aside until funding is
30 available.

31
32 Stephen Bernath, DOE and Policy co-chair, clarified that only the 2010 budget needed the Board's
33 approval that day, and the Board would receive another budget request for 2011 next year. He
34 explained that Policy developed two budgets during its retreat in the spring. One was Policy's
35 preferred budget which relies on receiving additional funding, and the second was a worse-case
36 budget in which projects and staff would have to be reduced by 30 percent this year. The
37 recommended budget consisted of those two put together with the intent of securing additional
38 funding from state and federal sources. This would keep experienced CMER staff for a longer time
39 and, in the event additional funding is available, the capacity to continue projects.

40
41 Fox asked if the Board could see the "worst case" budget. Cramer showed it (labeled "Option 2") to
42 the Board and explained the overall impact of about 25 percent phased-in reductions in 2010, 2011,
43 and 2012. In the preferred budget, if funding cannot be obtained, reductions would need to occur
44 more quickly after FY2010.

45
46 Laurie asked Bernath for the effects on the studies needed for the Clean Water Act assurances.
47 Bernath said those projects would be moved out further in time if the funding level isn't increased.

1 The ongoing projects would be finished but those not started would be delayed even farther out under
2 Option 2 than in the Policy-recommended option.

3
4 Cramer pointed out there is additional risk in losing institutional experience and capacity, and
5 existing efforts to queue up some of those projects could be sacrificed.

6
7 Laurie asked Bernath about the budget retreat, and asked if Tom Robinson, Washington State
8 Association of Counties and Policy co-chair, could provide more insight on Policy's recommended
9 budget.

10
11 Robinson asked the Board to consider how important the program is to them. The budget presented to
12 the Board was considered at length and shows what is needed to continue a viable program. He asked
13 if the Board was willing to step up and help acquire the necessary funding. The alternative was to
14 take the other budget, which basically takes the program down to a \$1 million dollar program, a third
15 of current level, and which doesn't maintain a viable program.

16
17 Fox said she didn't think any Board member doesn't want to support the program, and that she
18 wanted to help get money, but the reality of that occurring within 12 months is very slim. If not, the
19 Board would be a million dollars in the hole in 2011 which is not fiscally responsible.

20
21 Stinson said the Board should be willing to retrench.

22
23 Goldmark said DNR has had to go through an enormous budgetary reduction, and, yes, had to
24 retrench to a certain extent. He said that means we can't do what we want to do or what people
25 expect. It is a different way of doing business, and it would be unwise as chief executive to plan on
26 finding funding someplace else.

27
28 Stohr said he was worried that despite the Board's best efforts, the program won't be successful. He
29 said he was hesitant to step away from Policy's recommendation.

30
31 Fox asked if the budget had to be approved immediately. Cramer replied yes, the 2010 budget had to
32 be approved before the end of the fiscal year. He suggested each of Board members' individual
33 organizations could consider helping to find funding. He added there was some mention around the
34 Policy table that adopting the Option 2 budget would be sending a signal for a different type of
35 program that people may not want to participate in.

36
37 Robinson said Policy's discussions revolved around the notion that if you're asking for money and
38 yet you have a budget on the table that shows you can run a program with a certain amount, the
39 perception will be that you have all the money you need. He said Policy agreed to forward a budget
40 that takes all the cuts in the second year instead of the first year to maintain options through the first
41 12 months. That is the difference between the two budgets.

42
43 Stohr said any possibilities to get federal or state help will be known by the end of June. He
44 suggested the Board approve Option 1 and retrench if the indicators go down.

45
46 Bernath said if we can tap into some federal dollars and reallocate some existing state dollars instead
47 of finding new state dollars that is the initial strategy for making up for the \$2 million shortfall.

1 **MOTION:** Doug Stinson moved to approve the Option 2 FY2010 CMER work plan and
2 budget presented to the Board.

3
4 **SECONDED:** Brad Avy

5
6 **Board Discussion:**

7 Laurie said he liked Stohr's suggestion to adopt the recommended budget and be prepared to go back
8 in the near future if we have to.

9
10 Cramer said under Option 2 the program would have to phase down staff and administrative support
11 quickly.

12
13 Goldmark said he thought it would be premature to expect that by July 1 it could be known with any
14 certainty whether we could acquire additional funding.

15
16 **ACTION:** Motion failed. (3 Support (Avy, Stinson, Fox) / 5 Oppose (Bahrenburg, Laurie,
17 Hagiwara, Herrera, Little) / 1 Abstention (Goldmark)

18
19 **MOTION:** Joe Stohr moved to approve Option 1 and to be prepared by the August
20 meeting to fall back onto Option 2.

21
22 **SECONDED:** Dave Hagiwara

23
24 **ACTION:** Motion passed. (7 Support / 1 Oppose (Avy) / 1 Abstention (Goldmark)

25
26 **FORESTS AND FISH POLICY PRIORITIES**

27 Policy co-chairs Stephen Bernath and Tom Robinson explained three priorities that will take all of
28 Policy's time for the remainder of the calendar year:

- 29 1. Finding funding for the adaptive management program;
30 2. Clean Water Act assurances; and
31 3. Adaptive management strategic plan implementation.

32 Robinson added another priority is to re-educate themselves with Board Manual Section 22, and
33 suggested Board members may want to do the same to understand adaptive management processes.

34
35 **PUBLIC COMMENT ON CLEAN WATER ACT ASSURANCES**

36 Don Hamerquist, WRIA 19 Planning Unit, said he was very familiar with Clean Water Act
37 assurances and the underlying issues. He said he thought DOE was going to have a transparent public
38 process, and was prepared to participate in it, but that isn't the case. He asserted that CMER has
39 deliberately not implemented the basic trend and status monitoring necessary to determine whether
40 water quality standards are being met. He said he was not sympathetic to the lack of money being the
41 reason that forest practices are not on a trajectory towards achieving clean water standards, because
42 that hasn't been the issue in the past years when it wasn't implemented, and when groups
43 independently volunteered to help the process through volunteer efforts. The timber industry will not
44 allow any water quality monitoring access except through CMER, and CMER won't do it unless if
45 determining the effectiveness of rules. He said he thought the problem is highlighted in DNR's
46 comment on page 7 of DOE's draft 2009 report, which says the expectations are completely
47 unrealistic and we all know it.

1 Janeen Porter, WRIA 19 Planning Unit, said if it weren't for pushing from the outside, DOE would
2 not have done anything toward this 2009 deadline. She strongly recommended against continuing
3 clean water assurances.

4 5 **CLEAN WATER ACT ASSURANCES**

6 Stephen Bernath, Department of Ecology, explained that the Clean Water Act does not provide the
7 same contractual mechanism as the Endangered Species Act. The assurances were offered as an
8 alternative to provide some predictability about how clean water would be dealt with within the ten
9 years following the Forests and Fish Agreement. It essentially requires DOE to rely on the forest
10 practices rules and programs in association with the formal Adaptive Management Program to restore
11 and maintain forested waters in compliance with state water quality standards. The need for the
12 review was established in Board Manual Section 2.

13
14 Mark Hicks, Department of Ecology, said DOE is rapidly approaching the end of their July 1, 2009
15 deadline to show that Washington's Forest Practices program can continue to be relied on as a
16 mechanism for bringing waters into compliance with state water quality standards and the federal
17 Clean Water Act. It is DOE's intention to have a final draft by July 1, 2009 and that DOE is, for the
18 most part, confident that the milestones set for forest practices operations and compliance monitoring
19 activities can be done with existing processes and staff, except for some fine tuning to improve
20 coordination.

21
22 However, he said, DOE is very concerned about the pace and the progress of the Adaptive
23 Management Program. It has been 10 years since Forests and Fish and no studies have been
24 conducted to examine the effectiveness of the Forest Practices rules in protecting water quality. The
25 way things are going now under one of the budgets, the first of the studies would not be completed
26 until around 2013. If there is no new funding, many of the water quality studies that could be used to
27 validate that the forest practices rules are effective will not be finished for 25 to 30 years.

28
29 He said it is equally concerning that cooperators have different opinions of what it means to be
30 engaged in this process. As a result, once we get the technical studies done there may not be a system
31 of decision making that will make full use of the results because everyone has a different view of
32 what the intention is and how those studies are considered by Policy or by the Board.

33
34 DOE remains committed to this process, but important changes are needed. DOE has been working
35 with Policy on budget and planning to try to make sure water quality studies are set as high priority.
36 Also, DOE has tried to set realistic milestones to use available processes and monies, but this budget
37 shortfall is dire and we need to find new money or new ways of getting the job done. Otherwise we
38 will have difficulty holding on to the assurances.

39
40 Laurie asked about the process for responding to comments on the draft review. Hicks replied that
41 once all the comments are received, DOE will prepare a document with all the comments and DOE's
42 responses, send this to all who have been engaged in the process. He said he expected to report back
43 to the Board at the August meeting.

44
45 Fox referred to the water quality risk assessment for the 20-acre exempt rules, page 27, D. She said
46 according to the 2007 Forest Practices HCP annual report only about 111 out of 6,533 applications

1 were for 20 acre exempt lands. She said the risk should be assessed by the amount of folks that are
2 practicing and the locations of those lands.

3
4 Hicks said the HCP does look at some elements but not water quality. He said he generally agreed
5 that a lot of the information is probably out there and they should be able to use existing information
6 fairly efficiently. It is a combination of looking at the extent of 20-acre exempts on the landscape, the
7 size of the activities, and the amount of stream effect. He said

8
9 Fox maintained that the HCP has already been conditioned; if over 10 percent of the watershed is
10 impacted then the feds step in.

11
12 Hicks said all would be taken into account as the document is finished up. He said he was also
13 committed to work with small forest landowners in developing the analysis.

14
15 **PUBLIC COMMENT FOR FIXED WIDTH ADAPTIVE MANAGEMENT PROPOSAL**
16 **INITIATION**

17 Stephen Bernath, DOE, recommended that the proposal be split into two: One to develop a solution
18 to address disproportionate impacts to small forest landowners and the other to develop a long term
19 solution based on science for all landowners.

20
21 Miguel Perez-Gibson, Conservation Caucus, commented that the fixed width buffer options must
22 ensure a comparable level of riparian function as expected from current rules.

23
24 Peter Goldman, WFLC, said his organization is on record for supporting this for small forest
25 landowners. CMER is over-burdened, and to add the larger landscape would be a renegotiation of the
26 whole thing when it should be targeted as regulatory reform for small forest landowners.

27
28 Pete Heide, WFPA, said that small landowners need relief but all landowners need to meet the same
29 objectives. There should not be a separate set of rules divided by classes of landowners.

30
31 Ken Miller, WFPA, said he supported the fixed width buffer proposal. He said it will provide
32 simplicity and general parity to what is available to all professionals. However, he wished it included
33 the Eastside and dealt with the low impacts on the land from small forest landowners.

34
35 **FIXED WIDTH ADAPTIVE MANAGEMENT PROPOSAL INITIATION**

36 Marc Engel, DNR, presented the draft proposal initiation to the Board which requests the adaptive
37 management investigation of a fixed width, no entry management option for riparian areas adjacent to
38 Type S and F Waters in Western Washington. He mentioned the proposal timeline includes Policy
39 providing a petition for rule making at the Board's November 2009 meeting.

40
41 Laurie said he was concerned about the adaptive management work load, and conducting a review for
42 small forest lands would not be as lengthy an investigation as for all forest lands. He said he wanted
43 to see it go forward in two steps as Bernath suggested.

44
45 Fox said the concept is for overall equal protection and it was never intended to be just for small
46 forest landowners.

1 Goldmark asked Engel if the adaptive management workload would be greater if the proposal is for
2 all landowners.

3
4 Engel said the Board could ask Policy to answer that question.

5
6 Cramer said Board Manual Section 22 contemplates a certain process playing out. Deliberation
7 would initially take place around the Policy table to determine how to handle a proposal and how to
8 provide a consensus recommendation to the Board.

9
10 Fox asked if the recommendation delivered to the Board had to be a consensus recommendation.
11 Cramer said yes, and also the dispute resolution process is available to help get to consensus.

12
13 Goldmark asked if it can be forwarded as it is, or would it be more complex if all landowners are
14 allowed to utilize it.

15
16 Engel replied that Cramer could come back to the Board in August and report that Policy determined
17 additional time is necessary. The draft proposal initiation memo is a reflection of the draft rule the
18 Board approved for 30-day review which made the fixed width available to all landowners.

19
20 **MOTION:** Sherry Fox moved that the Board forward to the Adaptive Management Program
21 Administrator the fixed width riparian buffer proposal to implement the Adaptive
22 Management proposal stages. The adaptive management program administrator will
23 provide a status report to the Board at their August meeting and will submit a rule
24 proposal and petition for rule making from Policy to the Board at their November
25 meeting.

26
27 **SECONDED:** Doug Stinson

28
29 **Board Discussion:**

30 Fox commented that this would provide cost savings for small forest landowners - costs of laying out
31 riparian management zones and hiring consultants to run the DFC model, etc. This will save an
32 average of about \$2,000 to \$3,000.

33
34 **ACTION:** Motion passed unanimously.

35
36 **SPOTTED OWL POLICY WORKING GROUP**

37 Chuck Turley, DNR, explained at a past meeting there was some discussion about the Spotted Owl
38 Policy Working Group that state participation part of the charter may need to be revised. After some
39 discussion between the group and the state, it was determined that no changes to the charter are
40 needed after all.

41
42 **STAFF REPORTS**

43 Adaptive Management

44 Darin Cramer, DNR, gave a status report on the Adaptive Management Strategic Plan
45 implementation.

1 Rule Making Activity

2 Marc Engel, DNR, provided an update on the Board's rule making efforts.

3
4 Compliance Monitoring

5 Mary McDonald, DNR, announced that the Compliance Monitoring biennial report was recently
6 distributed and that the advisory/steering committee has met and is finalizing their charter.

7
8 Small Forest Landowner Advisory Committee and Small Forest Landowner Office

9 Dan Pomerenk, DNR, explained how the recent budget cuts have affected the Small Forest
10 Landowner Office.

- 11 • Several positions are cut.
- 12 • The Forest and Riparian Easement Program is on hold. The Department will continue to accept
13 easement applications but no work will be done.
- 14 • The Small Forest Landowner Advisory Committee will meet six times per year rather than
15 twelve.

16
17 Upland Wildlife Planning

18 David Whipple, DFW, explained that little work has been done to investigate alternative assessment
19 pathways. He said work does continue with the Spotted Owl Policy Working Group. On the
20 landscape level wildlife assessment, he said that DFW did not receive funding to complete the report
21 that was to be given to the Board in the future. He also added that there is no money for incentives.

22
23 Board Manual

24 Marc Engel, DNR, explained that a group of stakeholders are working to amend Board Manual
25 Section 21 for the Board's approval at the August or November meeting. The amendment would add
26 a conifer restoration template for the small forest landowners.

27
28 Spotted Owl Policy Working Group

29 Lois Schwennesen, Schwennesen & Associates, explained that the group is working very hard and
30 putting in a lot of time. A fair amount of work is science based and on incentives research. The key
31 areas of the program are finding the common denominators to work with each other and to focus on
32 the biggest issues that need attention.

33
34 Fox asked how many individuals are still involved in this group.

35
36 Schwennesen explained that there is one staff member from DFW and one from DNR, and there are
37 requests in for additional participation.

38
39 Legislative Activity

40 Marc Engel, DNR, provided an update on two bills that passed during the 2009 legislative session.

- 41 • House Bill 1484 and the companion Senate Bill 5401 expanded the Riparian Open Space
42 Program to include lands that contain critical habitat for threatened and endangered species as
43 designated by the Forest Practices Board. Acquisitions will be in the form of conservation
44 easements. Staff will recommend a rule making strategy at a future Board meeting.

- 1 • Senate Bill 5562 protects the ability of forest landowners to continue active forestry operations.
2 Owning land that has a growing crop of trees is added to the list of reasonable forest practices
3 even if the tree growth is managed passively. The land must be capable of supporting a
4 merchantable stand of timber and must not be actively used for a use that's incompatible with
5 timber growing.
6

7 He added that DNR will provide a detailed presentation on the budget impacts to the Forest Practices
8 program at the August meeting.
9

10 TFW Cultural Resources Committee

11 Pete Heide, on behalf of the TFW Cultural Resources Committee, recommended that:

- 12 • There be a TFW Cultural Resources Committee report as a standing quarterly staff report on the
13 Board's agenda to formally recognize this committee as the Board's committee of expertise on
14 cultural resources;
15 • Staff support be provided to the committee; and
16 • Testing of the Board's cultural resource module, which is in the watershed analysis manual, is
17 completed.

18 The committee is providing the Board with an updated copy of the Cultural Resources and
19 Management Protection and Management Plan. He encouraged the Board to attend any committee
20 meetings, on the third Tuesday of the month. He reminded the Board the committee produces results
21 in a collaborative way.
22

23 **NEW BUSINESS**

24 Goldmark said a Board retreat is not anticipated this year due to very scarce resources. He added that
25 Board members should let him know if something comes up that needs discussion and he could
26 arrange for extra meeting time before or after a scheduled Board meeting.
27

28 **EXECUTIVE SESSION**

29 No executive session.
30

31 Meeting adjourned at 3:30 p.m.