

1 **FOREST PRACTICES BOARD**
2 October 23-24, 2001
3 City Hall, 170 S. Oak St., Colville, Washington
4

5 **Members Present:**

6 Pat McElroy, Designee for Commissioner Sutherland, Chair
7 Dick Wallace, Department of Ecology
8 Fran Abel, General Public Member
9 Lloyd Anderson, General Public Member
10 Lee Falconer, Department of Agriculture
11 John Mankowski, Department of Fish & Wildlife
12 Toby Murray, General Public Member
13 Keith Johnson, General Public Member
14 Judy Turpin, General Public Member
15

16 **Members Absent:**

17 Dave Somers, Snohomish County Council
18 Bob Kelly, General Public Member
19 Robin Pollard, Office of Community Trade & Economic Development
20

21 **Staff:**

22 Lenny Young, Paddy O'Brien, Debora Brown Munguia, Jed Herman, Patricia Anderson,
23 Joanne Wearley, Josh Brown
24

25 **CALL TO ORDER**

26 Pat McElroy called the meeting to order and welcomed everyone. Introductions were made.
27

28 **Small Forest Landowner Joint Task Force & Board Committee Update**

29 Debora Brown Munguia reviewed the Board's commitment to small forest landowners and the
30 purpose of the Small Forest Landowner Joint Task Force. The scope of the Task Force is to look
31 at Alternate Plans, Forestry Riparian Easements, and other major issues facing small landowners.
32

33 The Task Force has been to six field sites that were representative of major issues facing small
34 landowners. The Task Force has decided to delay development of templates until more Alternate
35 Plans are received in order to get a better sense on what the templates should look like. The Task
36 Force has identified two tracks, a technical track, and administrative track. The technical track
37 will develop broad guidelines for field staff to use for review of Alternate Plans for approval.
38 These guidelines will be presented to the Board at a later date for review, adoption, and inclusion

1 in the Board Manual. The administrative track will look at short term needs such as how the
2 Alternate Plans will be approved and how the process will work.

3
4 Overall, Brown Munguia reported that staff and stakeholders are making progress and both will
5 continue to work diligently on the needs of the small landowners as they develop the templates.

6
7 **Board Discussion**

8 Keith Johnson indicated that the Board committee should be kept informed of the Taskforce
9 activities. Mankowski suggested that the Committee meet prior to the next board meeting.

10
11 McElroy stated that what was originally thought to be a quick fix with developing the templates
12 has turned out to require more time. Dick Wallace agreed and is pleased with the decision to try
13 some of the Alternate Plans first before developing templates to keep the process less
14 cumbersome.

15
16 Judy Turpin felt that the process of creating a template would need to take advantage of
17 similarities but also be mindful of site specific needs and perhaps look at a variety of models
18 versus just one template.

19
20 Mankowski felt that good progress has been made, but has two concerns with the overall
21 progress of the Task Force. First, there has not been much involvement by the Federal agencies,
22 National Marine Fisheries and U.S. Fish and Wildlife Service, and Mankowski's concern is that
23 there could be issues at implementation time if we do not have their endorsement early on.
24 Second, in the initial development of Forests and Fish, there was not a detailed discussion of
25 small landowner alternate plans like there is now, therefore, they did not anticipate the extra staff
26 time needed. John believes that at some point, depending on whether more staff time is needed
27 from any of the agencies, that agencies will need to take a look at FTE's and the budget.

28 McElroy responded that DNR is willing to commit resources to the extent possible.

29
30 Toby Murray was impressed with the Alternate Plan proposals but also expressed concern that
31 Federal agencies are not involved in the process. McElroy stated that he would try to engage the

1 Federal agencies to assist with the Alternate Plan process. Steve Stinson also noted that there
2 has not been a lot of emphasis on outreach to all small forest landowners but hopes to change this
3 once there is a final product with Alternate Plans and the templates.

4
5 **Permanent Rule To Implement SHB 2105**

6 Joanne Wearley gave a brief overview of the steps taken since the Board adopted an emergency
7 rule on August 8, 2001 consistent with HB 2105 for the Forestry Riparian Easement program.

8 The emergency rule was filed with the Code Revisers office on August 22, 2001 and will expire
9 on December 22, 2001. The Pre-notice Statement of Inquiry for the permanent rule was also
10 filed on August 22, 2001. Three comments have been received. Two were in favor of the
11 change and one was undeclared.

12
13 The Small Forest Landowner Advisory Committee recommended adopting the emergency rule
14 as the permanent rule, with a small change to the name of the questionnaire in WAC 222-21-050,
15 from “post harvest questionnaire” to “harvest status questionnaire”. This change better reflects
16 the nature of the form due to changes from HB 2105.

17
18 At this time staff recommends that the Board, at the November 14, 2001, meeting, accept the
19 proposed permanent rule language and direct staff to file the CR-102 no later than November 21,
20 2001, to start the permanent rule process.

21
22 The public hearings are scheduled for January 15, 2001, in Olympia and January 17, 2001, in
23 Spokane. All comments will be forwarded to the Board and Board members will receive a
24 summary of the comments.

25
26 At the February 13, 2002, Forest Practices Board meeting, staff will give a presentation on the
27 comments received during the comment period. If there are no substantial changes made to the
28 proposal, staff would recommend that the board adopt the permanent rule language. If there are
29 substantial changes, staff would request another continuance of the emergency rule and file
30 another CR-102 for a 30-day comment period, and hold another public hearing.

31

1 **Reasonable Use Rule Comments**

2 Joanne Wearley gave a brief overview of the steps taken since the Board instructed staff to
3 proceed with the rule making process at the March 9, 2001, meeting. Wearley also discussed
4 what the possible rule, as written, will do for landowners, the basic components of the proposal,
5 as well as the next steps for the Board and the Department to take if the Board decides to
6 continue with rule development.

7
8 A Pre-notice Statement of Inquiry was filed with the Code Reviser on August 20, 2001. All
9 comments received have been forwarded to the Board. The Forests and Fish rules represent a
10 comprehensive revision of the Forest Practices Rules to provide increased protection to aquatic
11 resources. Application of these rules may prevent a landowner from realizing a reasonable
12 economic use of their land. Some landowners commented during the rule development that the
13 rules, when added to existing rules, would remove all economically viable uses of their property.
14 The current Forest Practices Rules contain several tools designed to provide relief to landowners
15 including Alternate Plans, the Forestry Riparian Easement Program, and the Riparian Open
16 Space Program. However, not all landowners, or all forest land where severe economic impacts
17 exist, meet the qualifications for eligibility under these programs.

18
19 The Reasonable Use Exception proposal will allow landowners to submit a forest practices
20 application requesting a Reasonable Use Exception if the landowner believes the rules will result
21 in the denial of all or substantially all of the reasonable economic uses of their property. If a
22 Reasonable Use Exception is allowed, landowners will be permitted to perform forest practices
23 activities that would otherwise be denied.

24
25 The proposed language requires landowners who submit a forest practices application requesting
26 a Reasonable Use Exception to follow the SEPA process, which may include the development of
27 an Environmental Impact Statement. In some cases the applicant would also need to submit an
28 analysis of any other reasonable uses, a map of all other timber property, a description of past
29 land activities and proposed future activities, an appraisal of both the land and timber values, a
30 detailed summary of the acquisition history, original deed, and a land transaction summary.

31

1 Of the 22 comments received, a majority were undecided or undeclared, but were interested in
2 developing the rule language further. Based on the comments received, staff recommend that the
3 Board direct staff to work with stakeholders to refine the language.

4
5 Wearley concluded that if the Board decides to move forward, the next steps involved in the
6 development of the rule would include directing staff to submit a SEPA checklist for
7 environmental review. The proposal allows a variance from the Forest Practices Rules designed
8 to prevent a substantial impact on the environment. Therefore, a Determination of Significance
9 is possible, requiring the Department to complete an Environmental Impact Statement. This
10 proposal would be a significant legislative rule and a Small Business Economic Impact
11 Statement and a Cost Benefit Analysis would be required.

12 13 **Board Discussion**

14 Pat McElroy explained that examination of this issue began in the spring because the legislature
15 had directed the Attorney General's Office to advise agencies when proposed regulations might
16 raise constitutional takings issues and Board counsel suggested that the Board consider a
17 reasonable use exception. The pre-proposal process was designed to get input from the public on
18 this idea. Mankowski voiced a concern about how to fit this proposal into the Board's work
19 plan. McElroy responded that this proposal came about through advice from the Board's
20 attorney and therefore he feels that the Board should address it. Wallace indicated that the pre-
21 proposal process helped give the Board an idea of the scope of the issues and workload involved
22 and when and how can be decided during the Board's work plan discussion. Turpin suggested
23 talking with county officials about how their processes work as well as talking with attorneys
24 from the various interests. Most Board members were concerned with when to take this on and
25 at what pace.

26 27 **Wildlife Update**

28 John Mankowski led a discussion on wildlife issues, which included wildlife aspects in the
29 current rules, future of wildlife issues and what the Board should consider when developing a
30 wildlife strategy.

1 Wildlife issues are primarily addressed in the rules through habitat rules (wildlife reserve trees,
2 wetland habitats, forested wetlands, even-aged harvest size and green-up requirement, general
3 wildlife habitat) and Class IV special rules (bald eagle, gray wolf, grizzly bear, mountain
4 caribou, Oregon silverspot butterfly, peregrine falcon, sandhill crane, western pond turtle,
5 northern spotted owl, marbled murrelet).

6

7 Voluntary approaches exist for western gray squirrel and lynx. Currently, the majority of lynx
8 habitat in Washington State occurs on federal lands and the lands of three large, private forest
9 landowners. These three landowners have voluntarily worked with DNR and WDFW to develop
10 a habitat plan. The rules also recognize landscape planning options: LOPS, CHEAS, Special
11 Wildlife Management Plans and to some extent Landowner Landscape Plans.

12

13 As for the future, the Board needs to be aware of whether there are any petitions coming up for
14 the listing or delisting of species and how effective the current rules are at meeting wildlife
15 goals. For example, a moth, the mardon skipper, could be impacted by spraying. Mankowski
16 presented the following three questions to the Board to consider when discussing wildlife issues.

17 1) Does the Board want to establish/update a wildlife strategy? 2) How should we organize?
18 and 3) what is the timing and workload?

19

20 **Board Discussion**

21 Turpin would like to hear how “adaptive management” has been used for spotted owls and
22 marbled murrelets before any rule is developed for any other animals.

23

24 Pete Heide encouraged the Board to look at the Landowner Landscape Plan report. He stated
25 that the existing rules are complex, however landowners are working with the rules, and the rules
26 are working. It takes time and a lot of science to evaluate all the issues.

27

28 Mankowski is interested in helping the Board organize how to best deal with the wildlife issues.

29 The Board will add Wildlife Issues to its work plan to develop a strategy at a later date.

30

31

1 **Future Of Watershed Analysis**

2 Judy Turpin, Dick Wallace, and Pat McElroy led a discussion on watershed analysis. McElroy's
3 concern is that the development of Forests and Fish trumps watershed analysis and therefore he
4 is interested in seeing the differences between the two and explore how the two can be used
5 together.

6

7 Turpin's feels that watershed analysis allows decisions to be based on good information and has
8 clearer guidance as well as a strong commitment toward a watershed based water program than
9 Forests and Fish. Turpin feels that if the Board is going to make a decision to not proceed with
10 watershed analysis then the Board needs to think about the implications. Turpin feels that the
11 Forests and Fish Agreement assumes that watershed analysis will continue.

12

13 Wallace provided a brief history of watershed analysis. The Forest Practices Appeals Board
14 concluded in the Lake Roesiger decision that the agency does not have a system for addressing
15 cumulative effects. The watershed analysis rules addressed cumulative effects by going through
16 a watershed, usually between 6-10,000 acres, and considering the role that past forest practices
17 have played on the landscape. The process of watershed analysis includes weighing a variety of
18 variables such as the amount and kind of materials that are deliverable to the stream, and the
19 resources that are vulnerable (examples include fish, water supplies, etc). Forest practices
20 prescriptions go through a SEPA review. The landowner initiates most watershed analysis
21 because they are voluntary and not required by forest practices rules. Under Forests and Fish, a
22 watershed analysis can still add to the knowledge base especially in mixed land use areas to
23 identify how forest practices fit. There are several HCPs out that involve doing watershed
24 analysis. The questions to look at are what to do with those watershed analyses that are complete
25 and up for renewal. What are the landowner incentives to continue? Future incentives might be
26 that in doing watershed analysis you could get a longer term permit. We need to look at how we
27 can make doing watershed analysis less expensive for the landowner. Are the sizes of the
28 proposed watersheds ok? Can they be combined with RMAPS? It is premature to say watershed
29 analysis is not working or no longer viable. Clearly, the concept of addressing cumulative
30 effects through watershed analysis is built into the base rules and adaptive management and
31 Wallace believes it is still a useful tool.

1 McElroy asked Lenny Young what the Division's standpoint is on watershed analysis. Young
2 stated that the Division is not currently budgeted for training or for five-year reviews. He
3 indicated that the program is still doing the most critical watershed analysis where the staff work
4 is complete or nearly so, that are high profiled, or have five year reviews incorporated into an
5 HCP.

6
7 Dick Wallace indicate that there were no resource protection gaps in the Forests and Fish rules
8 but watershed analysis was sometimes more refined in its approach. He indicated that, for
9 example, they could be very useful for Alternate Plans or Road Maintenance and Abandonment
10 Plans. Pete Heidi indicated that landowners supported the continued existence of watershed
11 analysis. Unstable slopes may trigger incentives to do one as well as RMAPS. Watershed
12 analysis has tools to assess basin-wide sedimentation, hydrology issues and harvest rates. It is
13 still a viable option.

14
15 Judy Turpin indicated that there may be issues around training. Joseph Pavel indicated that he
16 stills endorses watershed analysis. There may need to be some improvements and incentives as
17 well as additional resources and training.

18
19 McElroy stated that cultural resources needs to be reviewed as this was originally to be
20 addressed through watershed analysis. Young indicated that the Department has some funding to
21 look into cultural resource issues.

22
23 **Board Manual**

24 Jed Herman updated the Board on the progress of the Board manual. Herman then gave an
25 overview of the template that would be used when developing or revising a manual section. This
26 would be used as a scoping instrument prior to changing or developing a section. The Board
27 approved of the template and asked that it be provided along with any sections that the Board
28 needs to review. McElroy stated if the manual sections are provided to the Board prior to a
29 Board meeting, allowing sufficient time for review, the Board could take at action the same
30 meeting.

31

1 **Fire Update**

2 Lenny Young briefed the Board on intersections between the Forest Practices Program and
3 wildfire suppression activities that occurred during this year’s fire season. Because of the
4 conditions in Eastern Washington, there was a wildfire emergency. As fire season peaked in
5 mid-August it was necessary for Executive Management to grant authority to region offices to
6 suspend the acceptance of forest practices applications because the Forest Practices staff
7 availability in the Division was limited due to fire suppression call-out. Only two of the seven
8 region offices felt it was necessary to use this measure. In both cases, the duration was only for a
9 few days. A week later, the authority to suspend acceptance of applications was rescinded as
10 weather changed and fire staff were released to return to their normal responsibilities.

11
12 Several issues emerged from this experience that need to be resolved before next year’s fire
13 season. First, the authority to actually suspend accepting applications is unclear and second, we
14 need to look at staffing patterns to better meet the needs of Forest Practices and the fire program
15 even in severe fire seasons. There are also processing issues when fire damaged timber needs to
16 be harvested quickly. McElroy mentioned that there was also an issue emerging with
17 Department of Agriculture and the citrus longhorn beetle.

18
19 **Review And Development Of Board’s Work Plan**

20 Debora Brown Munguia led a discussion on the Board’s work plan for 2002. Young reminded
21 the Board to be mindful of a finite amount of resources, our commitment to implement Forests
22 and Fish, our negative supplemental budget and the need to create a balance between new
23 developments versus doing a good job with what is in front of us. Brown Munguia stated that if
24 any activity involves rule making, this will require a significant amount of staff time.

25
26 The Board identified the following:

27 Current issues

- 28 • Cultural Resources Committee
- 29 • Small Landowner Committee
- 30 • Forest & Fish Implementation
- 31 ○ Adaptive Management (McNaughton)

- 1 ○ Board Manuals (Herman)
- 2 ○ Water Typing (FP Board)
- 3 • Reasonable Use (FP Staff)
- 4 • HB 2105 (FP Staff)
- 5 • HCP/SEPA (Rule fix) (FP Staff)

6

7 Must Do's

- 8 • Procedural / Ethic Rules (P. Anderson/O'Brien) November 2001
- 9 • Notice Rule for Recreation / Aesthetics (Turpin) February 2002

10

11 Strategic Planning

- 12 • Wildlife (Mankowski) following or concurrent cultural resources
- 13 • Cultural Resources (Johnson) ongoing
- 14 • Watershed Analysis (Wallace) as needed
- 15 • Forest Health (McElroy) February 2002
- 16 ○ Nexus with Emergency Forest Practices

17

18 The Board decided to change the format of the meeting agenda so that written updates from staff
19 will be provided instead of presentations being made at the meetings, unless an action is
20 required. Updates will be mailed out prior to the Board meeting and a period of time will be
21 allotted at the meeting for questions and answers relating to the staff reports. The Board directed
22 staff to break out higher-level policy issues from more detailed technical information and to
23 attempt to keep the length to one page with attachments if needed.

24

25 The Board wants one to two hours reserved on each agenda to discuss strategic planning issues.
26 Staff can provide timelines associated with those planning issues.

27

28 Lenny Young updated the Board on the request received from Washington Trout for an
29 immediate and retroactive moratorium on stream typing downgrades during the past
30 electrofishing season. A request of the CMER Instream Scientific Advisory Group to do an
31 initial review was declined by the Group. The request was then redirected to Fish and Wildlife

1 who did an excellent job in the review as well as a quick turnaround. Young thanked David
2 Price for his work and coordination of the review. The review generally substantiated the
3 request of Washington Trout and recommended that DNR put a moratorium on downgrades in
4 certain parts of the state under certain conditions.

5
6 **Public Comment**

7 Bob Playfair commented on his situation with broadcast burning. Bob is preparing a proposal
8 for the Board for a coordinated program that involves NIPF for broadcast burning and forest
9 health under burning.

10

11 **CLOSING REMARKS**

12 The Board adjourned the regular session at 4:30 p.m. Executive Session was called to order at
13 4:35 p.m. The Executive Session adjourned at 4:45 p.m. The next regular quarterly meeting is
14 scheduled for November 14, 2001, beginning at 9:00 a.m. at the Natural Resources Building.

15

16 McElroy reviewed the schedule for the evening open house for the public to meet the Board
17 members and the schedule for the field trip the next day. Meeting adjourned at 5 p.m.

18

19 **OCTOBER 24, 2001 - FIELD TOUR**

20 The Board, staff, and public met at the Comfort Inn in Colville to begin the field tour. Scheduled
21 for the field tour were a small forest landowner site and a large landowner site. Discussion
22 topics for the small forest landowner site included forest health, riparian management zones,
23 Alternate Plans, and culvert replacement to improve fish passage. At the large landowner site
24 topics included Road Maintenance and Abandonment Plans, stream adjacent parallel roads and
25 riparian management zones. The field tour ended at 4 p.m.