

1 **Forest Practices Board**  
2 **Special Board Meeting – November 28, 2022**  
3 Zoom Webinar and Room 172, Natural Resources Building  
4

5 **Members Present:**

6 Alex Smith, Chair, Department of Natural Resources  
7 Ben Serr, Designee for Director, Department of Commerce  
8 Jeff Davis, Designee for Director, Department of Fish and Wildlife  
9 Dave Herrera, General Public Member  
10 Kelly McLain, Designee for Director, Department of Agriculture  
11 Meghan Tuttle, General Public Member  
12 Pene Speaks, General Public Member  
13 Rich Doenges, Designee for Director, Department of Ecology  
14 Steve Barnowe-Meyer, General Public Member/Small Forest Landowner  
15 Wayne Thompson, Timber Product Union Member  
16 Vickie Raines, Elected County Commissioner  
17

18 **Members Absent:**

19 Cody Desautel, General Public Member  
20 Frank Chandler, General Public Member/Independent Logging Contractor  
21

22 **Staff**

23 Mary McDonald, Acting Forest Regulation Division Manager  
24 Karen Zirkle, Forest Regulation Assistant Division Manager  
25 Marc Engel, Senior Policy Advisor  
26 Patricia Anderson, Rules Coordinator  
27 Phil Ferester, Senior Counsel  
28

29 **WELCOME AND INTRODUCTIONS**

30 Chair Alex Smith called the Forest Practices Board (Board) meeting to order at 9:00 a.m.  
31 Introductions of Board members and staff was made.  
32

33 **GENERAL PUBLIC COMMENT**

34 Ken Miller, Washington Farm Forest Association (WFFA), apologized to the Board for his “sit  
35 down” at the last meeting causing the Board to reschedule today’s agenda topic. He said they remain  
36 profoundly disappointed in the Board’s action on November 10<sup>th</sup> that failed to follow the rules  
37 regarding alternate plans. He intends to keep the lines of communication open and maintain some  
38 sense of humor as they struggle through the next steps. He believed that staff may have some ideas  
39 for further modification and respectfully requested a meeting with Chair Smith as soon as possible to  
40 explore those ideas.  
41

42 Jim Peters, Northwest Indian Fisheries Commission (NWIFC), said the western Washington tribes  
43 continue to support the TFW, Forests and Fish process and the Adaptive Management Program. They  
44 recognize the process and sometimes the outcome is not a consensus product and that decision is then  
45 move to the Board. They honor the Board’s responsibility and the decision making process that is set  
46 up. He is hoping that everyone can get over this situation and move on and back to working together.  
47

48 Robert Mitchell said he believes the Board is charged with developing financial incentives or options  
49 and asked if there is a way to compensate small forest landowners for compliance on more restrictive

1 rules. He said DNR's Trust Land Transfer program is going to have an influx of money and  
2 suggested using that money to buy out small forest landowner if they want to sell.

3  
4 Jenny Knoth, PNK Consulting, said from her perspective the forests are in good hands. There is no  
5 crisis on the landscape. She said there are wonderful riparian zones that support a myriad of life in a  
6 very protective manner under the current rules. She also said CMER does produce good science. She  
7 asked the Board to guard against policy goals and personal agendas becoming a barrier to open and  
8 honest technical discussions as they proceed forward.

## 9 10 **WATER TYPING SYSTEM RULE MAKING**

11 Marc Engel, DNR, presented the water typing system rule components which were resolved by the  
12 Board at the August 2022 meeting and summarized the elements in which the Board requested to be  
13 addressed at the November 2022 meeting.

### 14 15 **Components Resolved:**

- 16 • Approved two anadromous fish floor (AFF) alternatives, A4 (7%) and D, for inclusion in the draft  
17 water typing system rule and to be analyzed for inclusion in the CBA, SBEIS and SEPA as part of  
18 the rule making packet.
- 19 • Confirmed the permanent water typing system rule including an AFF will apply to eastern  
20 Washington.

### 21 **To be discussed:**

- 22 • Delay initiation of the analysis for the AFF until after the November meeting of the Board;
- 23 • Goals and targets for the water typing system rule;
- 24 • Goals and targets of an AFF; and
- 25 • Address the inclusion of the map-based modeled water typing in the permanent water typing  
26 system rule.

27  
28 Engel presented a generic chart outlining a timeline of both the water typing system rule and the Type  
29 Np Water rule for the Board to visualize how the rule makings could move forward depending on  
30 which is determined the priority.

31  
32 Board member Steve Barnowe-Meyer asked what the status is of the map-based model. Engel  
33 responded the current interim rule does not have a map-based model element and it has not been  
34 included within the current Water Typing System draft rule. Board member Barnowe-Meyer believes  
35 the Board already agreed to have this included as it is included in the Master Project Schedule.

36  
37 Phil Ferester, Office of the Attorney General, clarified that the map-based model does exist in rule,  
38 however it is not in effect. This causes confusion by having two rules on the books as they are  
39 numerically next to one another. He suggested a possible goal of the Board is clarify which rules are  
40 in effect by only having one rule in effect.

41  
42 Board member Jeff Davis stated that based on what he heard during the Board's water typing rule  
43 committee meetings, the lidar based map model is very important to the small forest landowners and  
44 said it needs to be included in the rule making.

45  
46 Board member Steve Barnowe-Meyer said the current permanent water typing system rule that is on  
47 the books but is not in effect, is one of the methodologies for establishing fish habitat. He wants to  
48 ensure there is a continued goal to have one of the tools for use by small forest landowners for  
49 establishing end of fish habitat is using a lidar map based model.

1 **MOTION:** Steve Barnowe-Meyer moved the Forest Practices Board confirm a lidar map-based  
2 model as one of the goals of the permanent water typing system rule.  
3

4 **SECONDED:** Meghan Tuttle  
5

6 **PUBLIC COMMENT ON THE WATER TYPING SYSTEM RULE MAKING**

7 Darin Cramer, Washington Forest Protection Association, said the current rule requires the default  
8 physical criteria be used; however, if a landowner does not want to use the default physical criteria  
9 they can use a protocol survey. The maps produced in the early 2000 were 90% accurate and most of  
10 the error was with the terminal points. He does not know how a decision can be made if there is no  
11 measureable criteria. He said the Board’s water typing rule committee may have been disbanded  
12 prematurely. There is still hard work to do in order for the Board to make an informed decision  
13 consistent with the Forests and Fish Report.  
14

15 Jim Peters, NWIFC, said they are still concerned that landowners have a choice of not using the  
16 default physical criteria. Doing a protocol survey indicates at the time they did the survey, there was  
17 no fish. He said there is a small working group, based on the principal’s process, working on the  
18 barriers causing blockage of fish passage which they support.  
19

20 Elaine Oneil, WFFA, questioned how many years and how much money spent to research and  
21 develop the components of a very complex water typing system and the Board is just now clarifying  
22 the goals and targets of this system. Most concerning to her is revisiting the idea if a map based lidar  
23 model is one of the goals of the permanent water typing system. She thought that was already agreed  
24 to in the past. She said they are vehemently opposed to dropping a lidar map based model water  
25 typing rule that balances risk and meets the ninety-five percent threshold for certainty.  
26

27 Kendra Smith, Skagit County, said the Board is already deviating from the Adaptive Management  
28 process on several account and now appears potentially dropping the model based lidar map which is  
29 an important element to the county and small forest landowners. She questioned whether the Board  
30 has defined the goals and objectives for the water typing system rule and whether any action really  
31 needs to occur.  
32

33 **WATER TYPING SYSTEM RULE MAKING**

34 Chair Smith requests further discussion on the motion.  
35

36 Chair Smith asked Board member Barnowe-Meyer to clarify his intent of the motion. Board member  
37 Barnowe-Meyer said his intent is very responsive to the specifics in Engel’s presentation that DNR  
38 staff needed to know if the model is one of the goals. This is aspirational for future rule making and  
39 would like the Board to confirm.  
40

41 Board member Speaks asked Engel if the motion provided enough direction. Engel responded if the  
42 Board wants language added to the rule draft then the motion needs to reflect that, however, because  
43 a lidar map-based model is not available it would make part of the rule not implementable. Or the  
44 motion could include “when the day comes, the rule will be written using a lidar based model.  
45

46 Board member Tuttle said if it has been a goal all along then the motion should stand.  
47

48 Board member Barnowe-Meyer said his intent is aspirational and does not have to be handled with  
49 the current rule making.

1 **ACTION:** Motion passed unanimously.

2  
3 Chair Smith said the Board would now work on the remaining two items staff asked for in terms of  
4 clarification on the water typing system rule:

- 5 • Goals and targets of the water typing system rule which TFW Policy made recommendations to  
6 the Board; and
- 7 • Goals and targets for the AFF which the Board has received.

8  
9 Board member Tuttle questioned what the goals and targets and problem statement are for the AFF.  
10 Referring to Kendra Smith’s comment “what is the Board basing their decision on?”

11  
12 **MOTION:** Meghan Tuttle move the Forest Practices Board reconvene the Board’s Water Typing  
13 Rule Committee to determine goals and objectives to move rule making forward.

14  
15 Chair Smith stated she hesitates to go back to square one after so much work has been done. Engel  
16 explained the process and decision made by the Board regarding the PHB’s and AFF.

17  
18 Chair Smith asked the Board what would be helpful in helping the staff determine what the goals and  
19 targets are.

20  
21 Board member Herrera said the issues being discussed are not what the Board should be addressing.  
22 He believes there are bigger issues that get at “why we are here” and why the principal’s process has  
23 not worked because it has focused on problem solving rather than relationship building so we all are  
24 comfortable and on the same page. These questions and these issues need to go to the principals.

25  
26 Board member Speaks agreed with Board member Herrera and inferred that staff is ready to move  
27 forward with the rule making.

28  
29 **SECONDED:** Steve Barnowe-Meyer

30  
31 Board member Barnowe-Meyer seconded the motion because he does not believe there are clear  
32 goals and objectives, mostly objectives for specifics of a permanent water typing rule. We have this  
33 need to protect all fish habitat, but do not know what that is. He said to the extent that this motion can  
34 move us along he is supportive.

35  
36 Board member Davis questioned whether they have uncertainty. He does not support the motion. He  
37 agreed with Board member Herrera to have the Principals answer these questions. He believes the  
38 Board has provided staff clarity and is surprised that there is still a need for more clarity.

39  
40 Chair Smith asked Engel if staff has what they need to move forward or do they need more clarity.  
41 Engel responded that the Board’s committee did address these issues and recommendations were  
42 provided to the Board at their May 2019 meeting. Engel responded yes staff has what is needed for  
43 the preparation of the cost benefit analysis, the small business economic impact statement and the  
44 environmental analysis.

45  
46 Board member Barnowe-Meyer questioned whether there are outstanding issues to resolve. Engel  
47 stated that there may be some additional outstanding elements. He said when the Board chooses to  
48 move forward on rule making that when specific questions arise that staff can bring them to the  
49 Board.

1  
2 Board member Tuttle asked if would add additional time to the rule making process. Engel said it  
3 could. This is a complex rule with many aspects.

4  
5 **ACTION:** Motion failed. 4 Support (Tuttle, Raines, Thompson, Barnowe-Meyer) 7 Oppose  
6 (Doenges, Speaks, Davis, Serr, McLain, Smith, Herrera)  
7

8 Board member Tuttle asked for an update on the Board motion to prepare proposal initiation to  
9 request CMER develop an anadromous fish floor validation study. Engel responded that staff had not  
10 prepared it.

11  
12 Chair Smith proposed the Board table further discussion until February 2023. At which time staff can  
13 have a draft motion prepared for the Board to vote on.

14  
15 Board members expressed concern in delaying the rule making process.

16  
17 **MOTION:** Alex Smith moved the Forest Practices Board acknowledge the following elements for  
18 the water typing system rule have been approved by the Board:

- 19 • To balance error
- 20 • Minimize electrofishing;
- 21 • Address stream segments not shown on the DNR hydro layer;
- 22 • Improve the water typing map over time;
- 23 • Include methods to locate the type F/N break on the ground; and ensure the  
24 methods provide the ability to be applied by small forest landowners; and
- 25 • Be consistent with fish habitat as defined in rule.

26 She further moved the Board acknowledge that the following definition for the  
27 anadromous fish floor has been accepted by the Board: “measurable physical stream  
28 characteristics downstream from which anadromous fish habitat is presumed and an  
29 agreement that the AFF would establish the location upstream of which fish protocol  
30 surveys may begin under fish habitat assessment methodology.”

31 Smith further moved the chair direct staff to initiate the completion of the draft water  
32 typing system rule and associated analysis in preparation for Board action to initiate  
33 rule making through the filing of a Proposed Rule Making (CR102).  
34

35 **SECONDED:** Jeff Davis  
36

37 Board Discussion:

38 Board member Tuttle asked how would the alternatives be chosen and what metric would be used to  
39 choose between the options. Engel responded that it will come out in the analyses.  
40

41 **ACTION:** Motion passed. 7 support (Smith, Davis, Herrera, Speaks, Doenges, McLain, and  
42 Serr)/4 oppose (Tuttle, Thompson, Barnowe-Meyer and Raines)  
43

44 Chair Smith ask the Board what is the preference for priority. Board member Doenges asked if staff  
45 has a preference, efficiency wise. Engel said staff has a bigger head start on the water typing rule.  
46

47 Board member Barnowe-Meyer asked what the status might be from Department of Ecology on the  
48 Clean Water Act Assurances extension and whether it would impact one rule over the other. Board  
49 member Doenges said that the decision will not affect Ecology’s actions on the assurances.

1  
2 **MOTION:** Dave Herrera moved the Forest Practices Board move the water typing system rule  
3 making forward as priority one.  
4  
5 **SECONDED:** Pene Speaks  
6  
7 Board Discussion:  
8 None.  
9  
10 **ACTION:** Motion passed unanimously.  
11  
12 **EXECUTIVE SESSION**  
13 None.  
14  
15 Meeting adjourned at 11:45 a.m.