FOREST PRACTICES BOARD

REGULAR BOARD MEETING
May 14, 2013
Natural Resources Building
Olympia, Washington

Members Present
Aaron Everett, Chair, Department of Natural Resources
Bill Little, Timber Products Union Representative
Bob Guenther, General Public Member/Small Forest Landowner
Carmen Smith, General Public Member/Independent Logging Contractor
Court Stanley, General Public Member
Dave Somers, Snohomish County Commissioner
David Herrera, General Public Member
David Whipple, Designee for Director, Department of Fish and Wildlife
Heather Ballash, Designee for Director, Department of Commerce
Kirk Cook, Designee for Director, Department of Agriculture
Paula Swedeen, General Public Member
Phil Davis, General Public Member
Tom Laurie, Designee for Director, Department of Ecology

Staff
Mary McDonald, Acting Forest Practices Division Manager
Marc Engel, Forest Practices Assistant Division Manager
Phil Ferester, Assistant Attorney General

WELCOME AND INTRODUCTIONS

Aaron Everett called the Forest Practices Board (FPB or Board) meeting to order at 9:00 a.m.

APPROVAL OF MINUTES

MOTION: Dave Somers moved the Forest Practices Board approve the February 12, 2013 meeting minutes.

SECONDED: Bob Guenther

ACTION: Motion passed unanimously.

REPORT FROM CHAIR

Aaron Everett thanked Mark Calhoon for his service on the Board and introduced Heather Ballash, Department of Commerce's new representative. Everett also gave an update on Forest Practices Division projects, the start of special legislative session, and the agenda for the day.

PUBLIC COMMENT

Ken Miller, Washington Farm Forestry Association (WFFA), commented that disproportionate impacts still exist for small forest landowners, alternate plans cannot be accomplished without help, and a collaborative dialog with the legislature is needed. He suggested the current 20 acre riparian buffer rule for small forest landowners as a starting point for discussion.

Rick Dunning, WFFA, commented there is a big divide over the Forests and Fish rules and requested the Board contact Representative Blake in support of meeting with the legislature on the principles of Forests and Fish.

Norm Schaaf, Merrill & Ring, expressed concerns about the Forest Practices compliance monitoring report, specifically where anything less than 100% compliance of buffers and tree counts is a failure. He requested the Board implement a more accurate system.

Chris Mendoza, Conservation Caucus, commented that having wrong buffers on the wrong streams are the highest concern of the conservation caucus. He offered to assist DNR with its water typing training.

Kevin Godbout, Weyerhaeuser, commented that their voluntary protection plan with WDFW for the Taylor's checkerspot butterfly is nearly done and should be completed by the next Board meeting. He noted that the TFW Policy Committee workload is a serious problem.

Peter Goldman, Washington Forest Law Center, commented that TFW Policy Committee's work on Post Mortem and Type F waters has been a good collaborative process. He also said the Conservation Caucus wants significant improvement in DNR's screening of potentially unstable slopes in moderate to high hazard areas, and disagrees that all fish bearing and potentially fish bearing waters under the Forest Practices Habitat Conservation Plan are being protected under the interim water typing rule.

STAFF REPORTS

Northern Spotted Owl Implementation Team (NSOIT)

Andy Hayes and Lauren Burnes, DNR, explained NSOIT is exploring the applicability of conservation banking, land trusts, and conservation easements to Washington's Northern spotted owl protection efforts. They are also looking at adapting the U.S. Fish and Wildlife Service's critical habitat modeling tool to Washington.

TFW Cultural Resources Roundtable (Roundtable)

Jeffrey Thomas, Puyallup Tribe of Indians and Karen Terwilleger, Washington Forest Protection Association (WFPA), reported the Roundtable has distributed its 2013 survey and is working on guidance for implementing the Board's Cultural Resources Protection and Management Plan. Thomas said there is still no small forest landowner representation on the Roundtable and no dialog with the Adaptive Management program, and improved communication is welcomed.

Everett noted, and the Board agreed with, the consolidation of the two Roundtable reporting requirements, WAC 222-08-160 and WAC 222-20-120, into one annual report. The Board thanked Thomas for his persistence with improving cultural resources protection and management.

Board Manual Development

Gretchen Robinson and Marc Ratcliff, DNR, noted updates to Section 22 *Guidelines for Adaptive Management Program* will start in May-June and the new Section 5 *Forest Practices Hydraulic Projects* (FPHP) is on the department's website for review. Robinson thanked stakeholders for their respectful, patient participation.

There was no further discussion on the following staff reports:

- Adaptive Management
- Compliance Monitoring
- Rule Making Activity
- Small Forest Landowner Advisory Committee and Small Forest Landowner Office
- Upland Wildlife Working Group

FOREST PRACTICES HYDRAULIC PROJECT BOARD MANUAL DEVELOPMENT

Scott Rockwell, Stillaguamish Tribe, said the board manual stakeholder process was respectful, comprehensive, and efficient. He also noted that after the Board adopts the forest practices hydraulic (FPHP) rules and approves the FPHP section of the board manual that tribal consultation, multidisciplinary participation, and training will be key components to the successful implementation of the FPHP rules.

Stephan Dillon, Hancock Natural Resource Group, said the input of all stakeholder participants resulted in practical plus environmental approaches in the board manual.

Don Nauer, Washington Department of Fish and Wildlife (WDFW), said it was not easy to mesh the more instructive nature of the WDFW hydraulic project rules into the certainties of the forest practices rules, and noted collaboration in FPA pre-application planning is key to success.

The Board thanked the participants for their successful work.

LEGISLATIVE ACTIVITY UPDATE

Mary McDonald, DNR, reported that no legislative bills passed that affect the forest practices program, and provided an overview of the forest practices fiscal year 2013-2015 budget.

Everett noted the shifts in general fund-state monies due to Governor Inslee's budget.

PUBLIC COMMENT ON BOARD AND TFW POLICY ACCOMPLISHMENTS AND PRIORITIES

Mark Teply, Washington Society of American Foresters (WSAF), introduced himself as WSAF's monitor of the activities of the Board and offered WSAF as a resource to the Board.

REVIEW OF BOARD AND TFW POLICY COMMITTEE'S WORK ACCOMPLISHMENTS AND PRIORITIES

Marc Engel, DNR, recommended the Board update their 2013 Work Plan to:

- Change the completion dates to August 2013 for the:
  - Adaptive Management Program's riparian and Type F/Eastside temperature study,
  - Roundtable's annual report on WAC 222-20-120, and
  - Forest biomass rule making.
- Move the following to 2014:
  - WAC 222-16-080 rule making,
  - NSO critical habitat rule making, and
  - Board Manual Section 23, *Guidelines for Field Protocol Locate Mapped Divisions Between Stream Types and Perennial Stream Identification*. Specific guidance to locate the uppermost point of perennial flow.

Adrian Miller, Longview Timber Corporation, and Stephen Bernath, Department of Ecology, reported Policy Committee consensus on the Type N Water strategy and acceptance of the mass wasting effectiveness report. They noted work by the Policy Committee's Type N subgroup regarding the wet-season method for locating the uppermost point of perennial flow in Type Np Waters and the Policy Committee's Type F subgroup in the development of a charter, the success of facilitated Policy Committee meetings, and the Policy Committee's workload prioritization.

Paula Swedeen noted the August due date for the NSOIT recommendation to the Board.

Everett noted major progress on the Policy Committee's five major projects and date specific priorities, and WDFW and DNR's work regarding the application of Appendix M of the Forests and Fish Report in an Adaptive Management Program review of proposed WDFW draft rules amending the Hydraulic Code.

MOTION: Tom Laurie moved the Forest Practices Board approve the 2013 Board Work Plan as amended to include Forests and Fish Policy's priorities as outlined in the draft May 3, 2013 Workload document.

SECONDED: Bob Guenther

AMENDMENT TO MOTION: Aaron Everett moved to amend the motion to add at the end "with the following changes:

- Update the completion date for the NSOIT to August 2013;
- Add to the tasks, "TFW Policy Committee Work Plan Accomplishments and Priorities", at each regular meeting."

SECONDED: Tom Laurie

ACTION ON AMENDMENT: Motion passed unanimously.

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON ADAPTIVE MANAGEMENT REFORM AND FOREST BIOMASS RULE MAKING

Chris Mendoza, Conservation Caucus, commented on the need for a method to measure post-harvest biomass on site and validation of the University of Washington's sustainable supply studies.

Karen Terwilleger, WFPA, said WFPA supports the forest biomass and the adaptive management reform rule makings moving to the public review process.

RULE MAKING ON ADAPTIVE MANAGEMENT REFORM AND FOREST BIOMASS

MOTION: Aaron Everett moved the Forest Practices Board approve for public review the draft rule proposal amending WACs 222-12-045, 222-16-010 and 222-30-020. These changes reflect the recommendations of the settlement agreement regarding the Forest Practices Habitat Conservation Plan and the Forest Practices Biomass

Working Group. Everett further moved the Board direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making.

SECONDED: Dave Somers

Board Discussion:
Tom Laurie said the Department of Ecology (DOE) supports the rule proposal.

ACTION: Motion passed unanimously.

PUBLIC COMMENT FOR RULE MAKING ON FOREST PRACTICES HYDRAULIC PROJECTS

Stephen Bernath, DOE, supported full integration and moving from ordinary high water mark/line to bankfull width. He said DOE is looking at the nexus between fords, hydraulic projects, and water quality.

Norm Schaaf, Merrill & Ring, expressed concern about including Type N waters in the definition of forest practices hydraulic project and using bankfull width, and also recommended relocating part of the water crossing structures language to the board manual.

Peter Heide, WFPA, voiced concern about including Type N waters in the definition of forest practices hydraulic project and using bankfull width, and recommended WDFW revision of the hydraulic code rules include a separate section for HPAs on forest lands specific to the nexus with Appendix M of the Forests and Fish Report.

Chris Mendoza, Conservation Caucus, noted concern about Type N waters that meet the physical requirements of Type F Waters in the interim Water Typing rule and successful implementation of the Water Type Modification Form concurrence process given submittal of these forms are not required in WAC 222-30-020 (1) pre-application consultations.

Kevin Godbout, Weyerhaeuser, expressed concern about inclusion of Type N water crossing structures as forest practices hydraulic projects and whether the Board has authority to adopt bankfull width in the FPHP rule making instead of ordinary high water mark/line.

RULE MAKING ON FOREST PRACTICES HYDRAULIC PROJECTS

Marc Engel, DNR, briefed the Board on 2SSB 6406, and said the first two required steps of the legislation have been completed: the WDFW rulemaking to include the WDFW concurrence process in the Hydraulic Code and the Memorandum of Agreement between DNR and WDFW on integration. Engel requested the Board to direct staff to file this rule proposal with the Office of the Code Reviser to initiate rule making.

MOTION: Aaron Everett moved the Forest Practices Board approve for public review the draft rule proposal amending Title 222 WAC that incorporate the hydraulic code into the forest practices rules, with the following amendments:

- To include the proposed rule definition of “forest practices hydraulic project”, as well as an alternate rule definition which excludes Type N Waters;

- To include the proposed rule definition of “bankfull width”, as well as an additional rule definition of the term “ordinary high water mark/line” as defined in the hydraulic code.

Everett further moved the Board direct staff to file a CR-102 with the Office of the Code Reviser to initiate permanent rule making. It is the Board’s intention to select a definition at final rule making.

SECONDED: Dave Somers

Board Discussion:
Aaron Everett said his intent was to proceed with rule making while fully considering the comments received this morning and offering those options as part of the proposal for public review.

The Board discussed various ideas to clarify the proposed amendments to the motion.

Tom Laurie noted he wanted to hear clarifying testimony during the scheduled hearings.

ACTION: Motion passed. 11 support / 1 oppose (Little) / 1 abstention (Herrera)

PUBLIC COMMENT
Norm Schaaf, Merrill & Ring, noted that implementing bankfull width verses ordinary high water mark and adding Type N waters in the forest practices hydraulic project rule making have significant cost implications and questioned whether or not an economic analysis is required.

PUBLIC COMMENT ON THE CMER 2014 WORK PLAN AND BUDGET
None.

CMER 2014 WORK PLAN AND BUDGET
Jim Hotvedt, DNR, provided an overview of the work plan, summarized the budget, and requested approval of the 2014 CMER work plan and budget.

Everett noted the Forests and Fish account numbers are fairly solid, and the Board should consider whether to continue facilitation costs for the Forests and Fish Policy meetings, and the importance of the CMER budget and work plan to the settlement agreement and implementing the Forests and Fish Report.

MOTION: Aaron Everett moved the Forest Practices Board approve the 2014 CMER work plan and budget.

SECONDED: Paula Swedeen

ACTION: Motion passed unanimously.

PUBLIC COMMENT ON PETITION FOR RULE MAKING
Adrian Miller, Longview Timber Corporation, commented in opposition to the petition noting the current authority of DNR and WDFW can address the issue.

Rob Kavanaugh, Friends of the western gray squirrel and petitioner, commented that WDFW rules are not clear on nest tree and habitat protection, that protection needs to be based on science, and rule making to protect this species is needed.

Paula Swedeen asked whether better enforcement of existing regulations would suffice. Kavanaugh said the rule only protects the nest tree which falls short of what a viable population needs.

PETITION FOR RULE MAKING FROM ROB KAVANAUGH

Marc Engel, DNR, explained the petition process noting receipt of the petition on April 15, 2013 and a maximum of 60 days for the Board to approve or deny the petition. Engel added the state listed the Western gray squirrel as threatened in 1993 and the Board considered western gray squirrel rule making in 1996. After an EIS analysis, comments from public hearings, and recommendation from the TFW Landscape Committee, the Board chose voluntary protection via application screening and further efforts on a landscape approach.

Gary Bell, WDFW, gave a PowerPoint presentation on the species history, ecology, and current range, and explained the voluntary management process.

David Whipple explained that WDFW's current statutory authority only applies to nest tree protection. He said an FPA slipping through the cracks is not the norm, WDFW does not think a forest practices rule is necessary, and recommended WDFW:

- continue to work with DNR in screening applications,
- examine modifications to its statute,
- create structured guidance for its regions, and
- reassess its regional staff work load.

MOTION: David Whipple moved that the Forest Practices Board deny the petition for rule making dated April 11, 2013 to create a new Forest Practices rule similar to the Washington Department of Fish and Wildlife RCW that would enable DNR staff to protect the nest trees of the western gray squirrel.

Whipple further moved that the Board direct staff to work with the Department of Fish and Wildlife to explore operational, administrative or other mechanisms to increase the effectiveness of the current western gray squirrel voluntary protection approach, and provide their findings to the Board at its November 2013 meeting.

SECONDED: Tom Laurie

Board Discussion

Paula Swedeen requested WDFW reconsider whether rule making is necessary and consider landscape planning approaches, and asked whether there currently is conditioning authority. Engel replied DNR has conditioning authority given specific situations.

Tom Laurie noted it would be helpful to know what a western gray squirrel rule might look like.

Dave Somers encouraged WDFW to consider a voluntary or regulatory process that looks at landscape level habitat protection, and asked WDFW for clarification on their no-rule

recommendation. David Whipple replied that each situation is very site specific and flexibility provides better opportunities for protection.

Phil Davis asked about the population trends and the nest tree buffer size. Bell replied the western gray squirrel population is probably more widely distributed than we know and buffers are 50 foot radius minimum, and noted the importance of connecting habitat corridors.

ACTION: Motion passed unanimously.

EXECUTIVE SESSION

Executive session was convened from 3:02 p.m. to 3:30 p.m.

Meeting adjourned at 3:30 p.m.