

1 **FOREST PRACTICES BOARD**

2 August 13, 2003

3 The Squaxin Island Museum Library and Research Center
4 150 SE Kwuh-Deegs-Altxw, Shelton

5
6 **Members Present:**

7 Pat McElroy, Designee for Commissioner Sutherland, Chair of the Board
8 Alan Soicher, General Public Member
9 David Hagiwara, General Public Member
10 Eric Johnson, Lewis County Commissioner
11 John Mankowski, Designee for Director, Department of Fish and Wildlife
12 Keith Johnson, General Public Member/Small Forest Landowner
13 Sherry Fox, General Public Member/Independent Logging Contractor
14 Toby Murray, General Public Member
15 Tom Laurie, Designee for Director, Department of Ecology
16 Wendy Holden, Designee for Director, Office of Trade and Economic Development
17

18 **Absent:**

19 Bob Kelly, General Public Member
20 Lee Faulconer, Designee for Director, Department of Agriculture
21

22 **Staff:**

23 Ashley DeMoss, Forest Practices Assistant Division Manager
24 Paddy O'Brien, Assistant Attorney General
25 Patricia Anderson, Rules Coordinator
26 Karrie Brandt, Board Coordinator
27

28 **CALL TO ORDER**

29 Pat McElroy called the meeting to order at 9:02 a.m. Karrie Brandt gave an emergency safety
30 briefing.

31 Introductions of Board, staff, and attendees were made. McElroy extended the Board's appreciation
32 to the Squaxin Island Tribe for allowing the Board to be its guests.
33

34 **APPROVAL OF MEETING MINUTES**

35 **MOTION:** Eric Johnson moved to approve the May 14, 2003, meeting minutes.

36 **SECONDED:** John Mankowski
37

38 **Board Discussion**

39 Mankowski amended the minutes on page 2, line 28, from "... developed by the DNR" to
40 "...developed by the DNR in consultation with the Department of Fish and Wildlife"
41

1 **ACTION:** Motion passed unanimously.

2
3 **PUBLIC COMMENT**

4 Joseph Pavel, Northwest Indian Fisheries Commission, spoke on Road Maintenance and
5 Abandonment Planning (RMAP) rules. He commented that Forests and Fish Policy made
6 recommendations to Governor Locke and Commissioner Sutherland on ways to provide relief to
7 small forest landowners; he feels there are significant deviations from those recommendations in the
8 draft rule language that are extremely problematic. From the tribal perspective, the Forests and Fish
9 Report's (FFR) 15-year commitment to repair fish blockage is the most important component of the
10 RMAP process. At the time of FFR, it was estimated that ten million dollars a year would be needed
11 to meet that commitment; at the current cost-share level funding of two million dollars for the
12 biennium it would take 75 years to meet that commitment. He stated that this was also not
13 consistent with the objective to obtain federal assurances. The 4(d) rule placed a special emphasis
14 on the RMAP process being completed in five years and the road maintenance upgrades in 15 years.
15 Another part of the FFR was that landowners would create an RMAP for their entire block of
16 ownership when they submit a forest practices application. Under that scenario, RMAPs would be
17 completed in 15 years. Another deviation from the recommendations made by Forests and Fish
18 Policy is that RMAPs are only required on lands that are immediately being applied for under forest
19 practices. If it is a 50-year rotation then it will be 50 years instead of 15 years before all the small
20 landowner property would be covered under a RMAP. He concluded that there is an issue of non-
21 enforcement and non-compliance with the hydraulic code that has been chronic throughout all land
22 uses in the state.

23
24 Kevin Godbout, Weyerhaeuser, asked the Board to clarify the proposed marbled murrelet draft
25 language in WAC 222-12-090 (14). The concern is that surveys completed under the former Pacific
26 Seabird Group (PSG) protocol would not be valid. McElroy and Mankowski stated that the Board's
27 intent was to ensure that landowners comply with the protocol in place at the time and the language
28 will be revised to reflect this.

29
30 Peter Heide, Washington Forest Protection Association (WFPA), stated that WFPA has been
31 involved with the marbled murrelet proposed rule amendments. He believes that the stakeholders
32 are in agreement on what rule changes should occur. Development of specific language still needs
33 to occur and the stakeholders shall continue to work through the process.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

CHANNEL MIGRATION ZONE (CMZ) TECHNICAL WORKING GROUP

Marc Engel updated the Board on the status of the CMZ technical working group. He stated that the stakeholder group had been assembled, and were in the process of establishing and identifying the issues to be addressed. He presented the list of the CMZ technical working group members and their updated draft charter that captures the Board’s previous motions and discussions on CMZs for their review. Engel added that the group will establish a time line to complete the assignment and will report its recommendations on changes to the manual at the November Board meeting.

Sherry Fox expressed concern with the lack of small forest landowner representation in the group and asked if Larry Dominguez, with the Department of Natural Resources (DNR) Small Forest Landowner Office could represent their interest. Jed Herman acknowledged her request.

Alan Soicher asked that the group include recommendations on erodability of flood plain materials and issues related to the potential for future migration in channels with the potential for logjam-mediated avulsions.

OPERATIONAL RESEARCH

Geoff McNaughton explained that some adaptive management research projects would require experimental forest practices treatments. Current Board approved CMER projects that are affected include Hardwood Conversion (harvesting within a riparian zone) and Bull Trout Overlay (harvesting within “all available shade”). Normally these projects could not be implemented as an alternate plan because the approval standard of an alternate plan is at least equal in overall effectiveness as provided by the Forest Practices Act and rules. Stakeholders agree from both CMER and Forests and Fish Policy that conducting this research is needed as part of a successful Adaptive Management Program.

Tom Laurie would like to see the guidelines include the identification of who or what is responsible for making the final decision on the need of the project versus its impacts.

Ashley DeMoss offered additional information to the Board about how the forest practices permits would be processed for operational research projects, which would deviate from the standard forest practice rules. In assessing different options, DeMoss identified one opportunity under the authority

1 of the Administrative Procedures Act (APA) to do a pilot test of particular rules under particular
2 circumstances. Under the use of this pilot mechanism, the Forest Practices program could issue the
3 permits where the rules were being tested. She continues stating that the authority for these pilots is
4 currently granted under the APA in RCW 34.05.313.

5
6 Soicher questioned McNaughton on the need to approve these projects if they could not meet the
7 standards of an alternate plan. McNaughton responded that some of the research objectives may
8 require this kind of manipulative approach. However, CMER is providing guidelines that would
9 require their approval, Scientific Review Committee peer review, risk assessments to public
10 resources, and determining if the manipulative approach is indeed necessary.

11 12 **FOREST PRACTICES PROGRAM UPDATE**

13 Herman conveyed to the Board the staffing losses due to recent budget cuts and informed them that
14 some work from the Small Forest Landowners Office was combined with work from the
15 Stewardship Program. The loss of staff will mean that the program will take longer to meet its
16 deliverables.

17
18 McElroy told the Board that the reductions were made in the program's flexibility versus its
19 staffing, so the ability to service the Board's rule making requirements are now drastically reduced
20 from where they have been historically.

21 22 **CMER WORK PLAN**

23 McNaughton asked the Board to approve the CMER and Forests & Fish Policy's recent
24 recommendation to continue funding the Type N Buffer Characteristics, Integrity, and Function
25 project, Riparian Management Zone Resample project, and the Sensitive Site Identification
26 (Amphibian Seep Research) project. In addition, he announced to the Board that CMER intends to
27 begin submitting annual work plans to them for approval that will include a detailed budget
28 showing projects, their priority, and available funds.

29
30 Eric Johnson asked if the funds for these projects were anticipated or were these requests resulting
31 from cost overruns. McNaughton said they were not cost overruns, and that CMER will be coming
32 to the Board annually for funding requests. This is to ensure the Board's continued involvement in
33 ongoing projects.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

MOTION: Tom Laurie moved that the Forest Practices Board approve the proposed second year funding for the Type N Buffer Characteristics Integrity and Function project (\$125,000), RMZ Resample Project (\$185,000), and the Sensitive Site Identification Amphibian Seep Research (\$35,000).

SECONDED: Wendy Holden

ACTION: Motion passed unanimously.

RULE MAKING – CULTURAL RESOURCES

Tim Thompson, Jeffrey Thomas, Peter Heide, Ashley DeMoss, and Norma Green, representatives on the Timber, Fish and Wildlife Cultural Resources Committee, presented the Cultural Resources Protection and Management Plan and their recommendations for Board action. Their introductory remarks explained that the main purpose of the cultural plan was to provide protection and management of cultural resources, establish and maintain communications between landowners and tribes, ensure that cultural resource protection was accomplished through the development of cooperative processes, and improve access to tribal cultural resources. They stressed the importance for the Board to understand that this was an option, negotiated agreement. The cultural plan, which is an addendum to the FFR, not for Board, should be viewed as a living document to improve the process and achieve the objectives of the parties to protect cultural resources. The recommended Board actions from the committee’s proposal included a rule package that incorporates the cultural plan as one of the voluntary processes the Board will review annually, and incorporates the cultural resources module into the watershed analysis process, as well as approval of the module as a board manual.

MOTION: Pat McElroy moved that the Forest Practices Board direct staff to file the pre-proposal of inquiry (CR 101) with the Office of the Code Reviser to inform the public of rule making to implement the cultural resources protection and management plan and to provide notice pursuant to RCW 76.09 notifying the counties and WDFW of rulemaking intentions.

1 **SECONDED:** Wendy Holden

2
3 **Board Discussion**

4 Laurie asked about the existing rule regarding meetings between affected tribe(s) and landowner(s):
5 whether the meetings between them are being confirmed, and are there consequences if they do not
6 take place. He is concerned that DNR would need to make a decision as to if one party was timely
7 or not and whether the notification was correct. DeMoss stated that the current rule has been
8 implemented inconsistently in the past; and the information technology system that the Forest
9 Practices program has brought on-line for application review will significantly help to notify those
10 tribes who subscribe to it in a more consistent and timely manner. Thompson interjected saying
11 affected tribe(s) and landowners will have to be responsible for communicating and meeting with
12 each other within the time limitations. McElroy explained that DNR would need to make a decision
13 on forest practices application by statutory timelines, regardless if the tribe(s) and landowner had
14 met.

15
16 Eric Johnson asked if there was a financial burden for small forest landowners that would prompt
17 the need for assistance similar to that of the RMAP program. Thompson responded that there would
18 be costs to small landowners in order to participate in watershed analysis with the new cultural
19 resources module, but that it would not be comparative to RMAPs. DeMoss also explained that
20 watershed analysis is a voluntary program; landowners choose whether to conduct the process or to
21 participate in it, unlike RMAP requirements.

22
23 Mankowski inquired if there would be a reporting mechanism to inform the Board how well the
24 system was working. DeMoss stated that the cultural plan will be on a continually review basis, so
25 the Board will know if the rules are effective. If further steps are necessary, they can then build that
26 into their work plan.

27
28 Soicher asked what the relationship was between the protection of cultural resources under the
29 Class IV Special and other resources analyzed as part of the watershed analysis module and would
30 sites identified through the module become registered with OAHP.

31
32 Allison Brooke, OAHP, explained that the gray areas are the ethnographic areas. Only the people
33 who have the particular credentials set by the federal government may submit a site form to their

1 office which registers the site. Other ethnographic data are put on a separate GIS data layer so
2 people have the information but it does not necessarily trigger a Class IV Special.

3
4 Wendy Holden was interested in hearing the tribal perspective. Thomas mentioned that there is a lot
5 of faith expected of the tribes in a voluntary approach. They want to ensure protection of the
6 cultural resources that have been important to their community and that still remain available to
7 them. He has distributed the cultural plan to the tribes for review and to his knowledge, none are
8 objecting to date.

9
10 **ACTION:** Motion passed unanimously.

11
12 McElroy wanted to clarify how the Board intends to engage in government-to-government
13 discussions with individual tribes on the cultural plan. The Board is subject to the Open Public
14 Meeting Act, chapter 42.30 RCW, which requires the Board to conduct its business in public.
15 Therefore, in order for tribes to discuss and convey their comments to the Board, time will be
16 specifically allotted to them during a meeting of the Board.

17
18 **RULE MAKING – ROAD MAINTENANCE AND ABANDONMENT PLANS**

19 Herman presented the proposed draft emergency RMAP rules created by stakeholders and the DNR.
20 He requested the Board accept them for public review. The new language will be incorporated into
21 chapters 222-16, 222-20, and 222-24 WAC.

22
23 **MOTION:** Sherry Fox moved that the Forest Practices Board direct staff to file the
24 proposed rule making notice with the Office of the Code Reviser to inform
25 the public of emergency rulemaking and to provide notice pursuant to RCW
26 76.09 notifying the counties and WDFW of rulemaking intentions.
27 Furthermore, to allow staff the authority to correct any typographical errors,
28 if needed.

29 **SECONDED:** Eric Johnson

30

1 **Board Discussion**

2 The Board suggested the following changes to the draft emergency rule:

3

4 **AMENDED**

5 **MOTION:** Sherry Fox moved to amend 222-24-0511 (3) on page 12, line 43 where it
6 states, “required to remove fish passage barriers” and replace it with
7 “required to remove, replace and repair fish passage barriers”.

8 **SECONDED:** Eric Johnson

9 **ACTION:** Amended motion passed unanimously.

10

11 **AMENDED**

12 **MOTION:** Pat McElroy moved to amend 222-20-040 (5)(i) page 5, line 42 adding
13 “during the term of the application or notification” after the phrase “affected
14 by the forest practices application or notification”

15 **SECONDED:** Tom Laurie

16 **ACTION:** Amended motion passed unanimously.

17

18 Mankowski pointed out that even though reporting on progress is built into the approach to RMAPs
19 for small landowners, the legislature’s Second Substitute House Bill 1095 did not exempt their
20 culvert replacement from the 15-year commitment in the Forests and Fish agreement. He felt there
21 was still an expectation that repairs will be addressed within that time frame.

22

23 Holden wanted to know how many fish blocked culverts existed and if 15 years was long enough to
24 address all of them. Herman explained that three counties in the state have 100% inventory of their
25 culverts. Mankowski added that a benchmark was inserted to stress the importance to the state and
26 to confirm the commitment for federal assurances. Not having a benchmark would erode the
27 promises the state made during the Forests and Fish negotiations.

28

29 **ACTION:** Motion passed unanimously.

30

31 **RULE MAKING – MARBLED MURRELET**

32 Dave Whipple and Eric Cummins, Washington Department of Fish and Wildlife (WDFW), and
33 Ashley DeMoss, Department of Natural Resources presented draft rule and board manual language
34 that would implement the revised PSG revised survey protocol for marbled murrelets. With support

1 from stakeholders, WDFW requested the Board to direct DNR staff to file a CR-101 and initiate the
2 30-day review process for rule making. Beginning the rulemaking process now is necessary for the
3 permanent rule to become effective prior to the 2004 murrelet survey season.

4
5 **MOTION:** Toby Murray moved that the Forest Practices Board direct staff to file the
6 pre-proposal of inquiry (CR 101) with the Office of the Code Reviser to
7 inform the public of rule making to implement the revised marbled murrelet
8 survey protocol.

9 **SECONDED:** Keith Johnson

10 **ACTION:** Motion passed unanimously.

11
12 Eric Johnson asked if the draft rule related to murrelet circling behavior would deviate from the
13 PSG protocol the Board is being asked to adopt. Cummins clarified that the protocol has a general
14 statement that low circling murrelet behavior is indicative of occupancy and in those situations it is
15 recommended to go to the regulatory or evaluating agency. The draft rule on circling is consistent
16 with the protocol.

17
18 **MOTION:** Keith Johnson moved to direct staff to work with WDFW and the stakeholder
19 groups to develop marbled murrelet rule language and reach general
20 agreement with affected parties to meet the requirements of chapter 76.09
21 RCW notifying the counties and WDFW.

22 **SECONDED:** Wendy Holden

23 **ACTION:** Motion passed unanimously.

24 25 **WILDLIFE PLANNING**

26 Mankowski updated the Board on the wildlife work plan strategy. He gave background on the
27 elements the work plan was to include and estimated that it will take two to three years to
28 accomplish. Currently, with stakeholder involvement, WDFW has established a cross-program
29 WDFW Core Group to direct strategy and oversee project management. WDFW has also discussed
30 with DNR interagency coordination, initiated the development of scoping documents for the work
31 plan elements, begun drafting a master timeline for project management, and initiated the strategy
32 for the overall project. Mankowski outlined some of the next steps, including progress reports and a
33 wildlife workshop for Board members.

1
2 Toby Murray inquired if there was any information that might indicate an appropriate amount of
3 time to make an assessment of a rule's effectiveness. Mankowski conveyed that they have learned a
4 lot in the past 10-12 years about implementation and applying rules on the ground and feels an
5 assessment can be done.

6
7 **September Special Board Meeting**
8 Patricia Anderson announced that the annual Board retreat was scheduled for September 9th and 10th
9 in Yakima at the Red Lion Gateway Center. The field tour will be focused in the Ahtanum on both
10 private and public lands.

11
12 **MOTION:** Toby Murray moved to adjourn the meeting.
13 **SECONDED:** Alan Soicher
14 **ACTION:** Motion passed unanimously.

15
16 Meeting adjourned at 4:06 p.m.